

IN THE  
UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

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PATRICK CLARK, BENJAMIN C. KINGS-  
BURY, JAMES P. HARVEY and A. G.  
KERNS, Administrator of the Estate of  
JAMES CLARK, Deceased,

*Appellants,*

*vs.*

THE BUFFALO HUMP MINING COM-  
PANY (a Corporation), and THE EMPIRE  
STATE-IDAHO MINING & DEVELOP-  
ING COMPANY, (a Corporation),

*Appellees.*

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**VOL. IV.**

(Pages 1118 to 1301, inclusive)

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**EXHIBITS.**

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Upon Appeal from the United States Circuit Court  
for the District of Idaho, Northern Division.

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# EXHIBITS.





Plaintiffs' Exhibit No. 1.

[Pocket Memorandum Book.]

[Endorsed]: Clark vs. Sweney. Plffs' Ex. 1 (entry).  
E. J. L. Sten. In Evidence.

Caps	3
8-2-12 in	Outside
66	
9-3 12 "	4
6	1300 Station
8-9 10	O. Edlund
6	Ransom
	quit
1	3 o'clock shift
Rodes	Palmer
No Card	Goettlisher
Foster	A Nelson
Walker	Jas. D. Moor
Louis Kuchen	
McMaster	5
Funchanis sick	Did Not Work 20
2	6
Dayley	No 1 Tunnell
H. Rogell	C M Armstrong
Antone Swanson	Frank Gay
Thos. McGowan	Chas Tubert
R. S. Kelley	H. W Hite
G. Brown	John McBride

Bassett		Drill Hole in
A.		Tunnell 100 feet
		on Left crosscut
	7	
		11
	8	150 feet.
Palmer		Side 150 feet
Filet Goettlicker		Sept 7-99
Chas Osgood Miner		face of tunnel
H. O. Dahll		On Left side
Hahn H		Drill Hole
Jacob		150 feet
Jacob		Sept 10 99
Hahn		Tunell
		Hole to Right
	9	of Drift 100 feet
H		
		12
	10	Sept 15
	Aug 22-99	100 foot
Drill Hole on 1200		Level on
Hanging Side		Poorman
Aug 26		Side
Hole on foot		Hole
Sept 1		182 feet
1100 Drift		Sept 19 99
East		Drill Hole
Hole 67 feet		146 feet
Sept 4-99.		

14



40 P. 8x14x10 feet  
 1600 Peces  
 2x12x4 feet 9½ inches  
 100 Peces  
 2x4x20  
 400 Peces  
 5½x20 feet  
 100 Peces 1x4x16  
 Sept 9|99  
 Nom of Sahe  
 No 37611  
 Oreded  
 Nails  
 1 keg 60  
 1 " 40  
 1 " 20  
 1 " 10  
 200 feet  
 ½ Rope

20

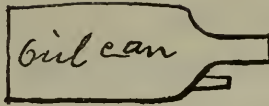
John Stone  
 Al. Engeberg  
 December 31

16

Shaft Lumber  
 80 P. 10x10x16 feet  
 40 " 10x10x18 "  
 40 " 10x10x14 "  
 40 " 8x10x18 "

Drill Hole  
 in fly  
 Wheel Prit  
 62 feet 6 in

22



at Poorman  
from foot  
Wall to face  
34 feet

24

from center  
of Scuckison  
Chamber

8 off Face  
26 feet  
11 Each

To center of  
Fly Wheel  
is 26 feet

29

1|99

32

26

pffs 6 for ident

1100 crosscut  
17 feet 8 in

E. J. L. on the

6 of Decem

W J Bailey  
Jan 15|1900

34

1200 Drifte  
144 feet  
1200 West  
25 feet

Peter  
Gilorich

1300 Drifte  
100 feet

44

Sept supplies  
15 Box Candles  
6. 12 Lbs. Hamers  
1 Crosscut Hand

1600 D. E 70  
1600 D W 80

Saw

28

December  
Crosscut on  
100 foot Livel

Norwick

E. Pierce

Thos Kempsey

45	52
Sept 10 99	Plffs 3 Ident. E. J. L.
	Dec 1 99
47	1200 East
Sin	Drift 75 feet from x cut
48	Dec 4 99
Al Presby	Drill Hole in No 1 tunnell 1350 feet 9 in
50	
Oct 1 99	53
1600 crosscut	Pff's Ident. Ex. E. J. L.
47 feet from	Dec 15 99
Shaft	1200 East Drift
1200 crosscut	102 ft 4 ft of
34 ft total	ore
Distans from	1300 East Drift
foot Wall 41 ft.	from crosscut
Week Ending Oct. 8-99	42 ft 18 in
Plffs Ex. 1	ore 1600
1200 crosscut 47 feet to Ore	East Drift
1600 crosscut from Shaft	from x cut
60 feet adavance 13 ft	25 ft 6 inch
1600 Pump Station 40 feet	ore
from Shaft 20 ft wide	
Thos Jay	54
	Dec 15 99
51	1600 West
	Drift from

x cut 28 ft	Drift 65 feet
2 feet of ore	2 feet of ore
1500 east	
Drift from	58
x cut 275 ft	Week Ending Jan 6 1900
3 ft of ore	1200 .ED. 133 ft 2 ft of ore
	1200 .W .D 16 feet 2 ft of ore
	ore
56	
Jan 1 1900	1300 East Drift 84 ft 1 foot
1200 Drift	of ore
East of x cut	1500 East Drift 314 ft 5 ft
123 ft 3 ft	of ore
of ore	1600 East Drift 78 ft 1 foot
1200 West	of ore
of x cut 11 ft	1600 West Drift 82 ft 6
2 ft of ore	inch of ore
1300 East Drift	
75 ft 2 ft	59
of ore	
	72
57	\$2000
Jan 1 1900	\$2000
1500 Drift	
East 305 feet	76
4 ft of ore	Culbertson
1600 West Drift	at the Old
60 feet 18 in	National
of ore	Bank
1600 East	Spoknae

78	82
Laging for	No.
Pump Station	East E. St.
to the set	Iron Mountain
64 P 2x12x5 feet	Michigan
720 Peces	\$83-25c
Laging for	Board for Table
Water Station	$\frac{3}{4}$ x3 feet 3 in
50 Peces 2x12x5	Slat $2\frac{1}{2}$ in
250 2x12x5 fet	and one and
Totel for	$1\frac{3}{4}$ in
Pum Station	
and Moter	84
Station	1100 Drift East
970 P 2x12x5	650 feet to care
	Total 825 feet
	to face
80	Aug 26 99
100 foot Level	the Last Lift
East of ore	From 1500 is 112
Shute	feet to Bottom
236 feet	of Station
200 foot Level	which is Call
330 feet	1600 Station
Work	
from Pump	
Shaft	





- Plan of the -

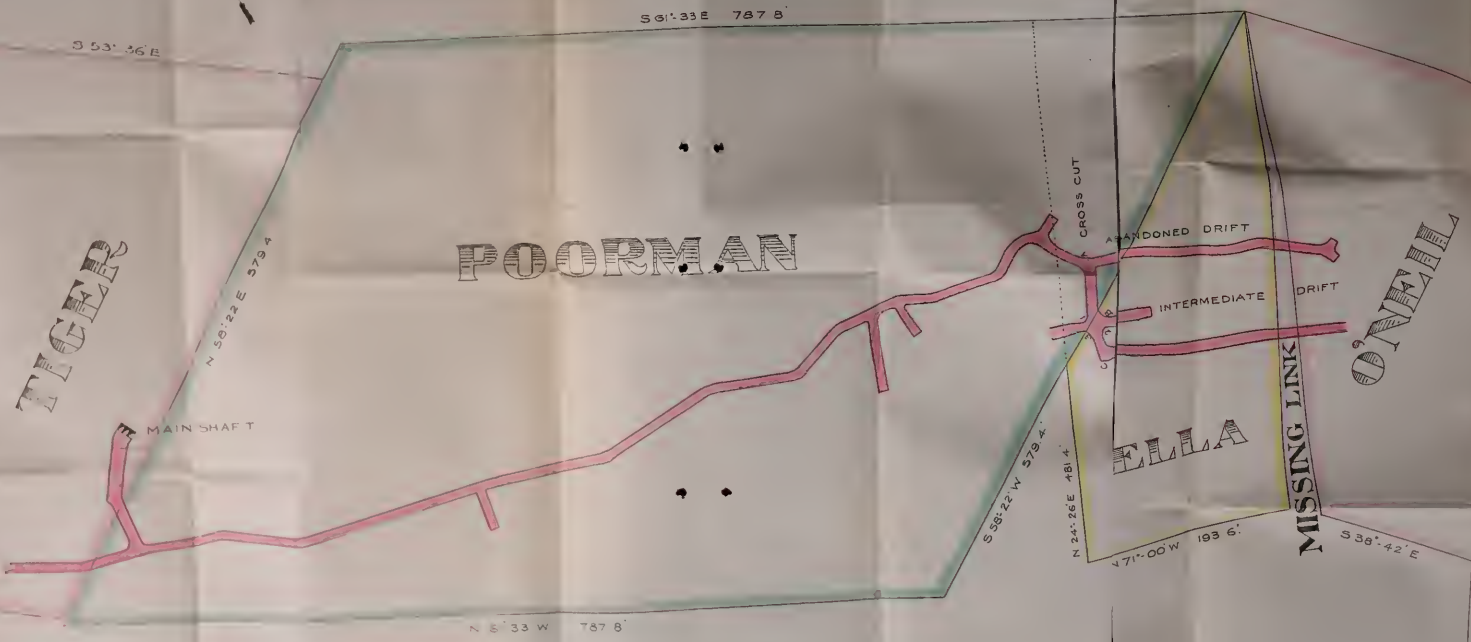
1200 FT. LEVEL

# POORMAN - ELLA MINE

SCALE 60 FT = 1 INCH



*Plan of the  
1200 ft level  
of the  
Poorman - Ella Mine  
J.C. Ralston  
Oct 1, 1901*



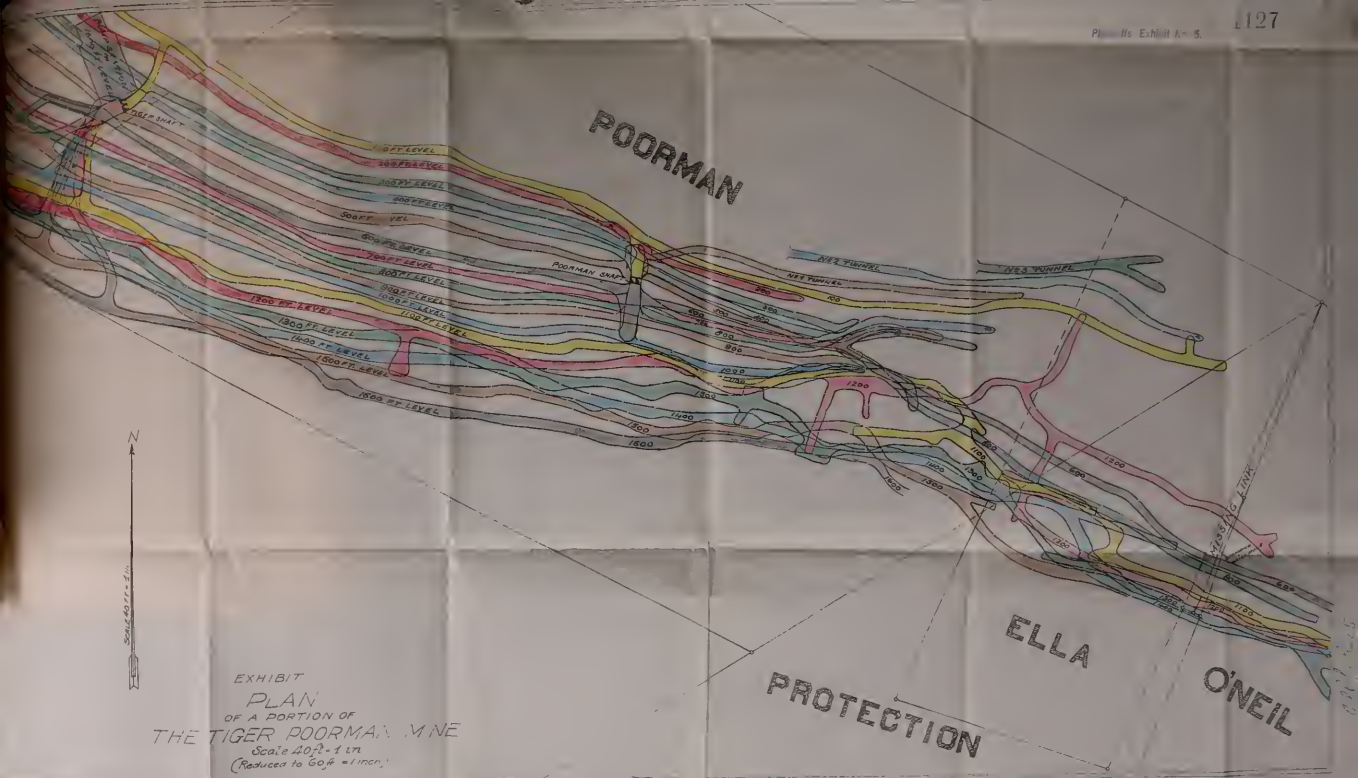


EXHIBIT  
 PLAN  
 OF A PORTION OF  
 THE TIGER POORMAN MINE  
 Scale 40 ft = 1 in  
 (Reduced to 60 ft = 1 in.)



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**Plaintiffs' Exhibit No. 7.**

**Mining Deed.**

This Indenture, made this 6th day of February, A. D. 1896, between Patrick Clark and his wife Mary R. Clark, of the County of Spokane and State of Washington, parties of the first part, and F. R. Culbertson, of the county of Shoshone and State of Idaho, party of the second part;

Witnesseth: That the said parties of the first part, for and in consideration of the sum of One Dollar, Gold Coin of the United States, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, remised, released and forever quitclaimed, and by these presents does grant, bargain, sell, remise, release and forever quitclaim unto the said party of the second part, his heirs and assigns, the undivided one-twentieth (1-20) interest in the Ella Fraction and the undivided one twentieth (1-20) interest in the Missing Link claim, as located, surveyed, recorded and held by said parties of the first part, situated at Burke, in the Lalande Mining District, Shoshone County, State of Idaho, together with all the dips, spurs and angles, and also all the metals, ores, gold and silver-bearing quartz, rock and earth therein, and all the rights, privileges and franchises thereto incident, appendant and appurtenant or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, in-



terest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in or to, the said premises, and every part and parcel thereof, with the appurtenances.

To have and to hold, all and singular, the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, his heirs and assigns forever.

In Testimony Whereof, the said parties of the first part have hereunto set their hand and seal the day and year first above written.

PATRICK CLARK. [Seal]

MARY R. CLARK. [Seal]

Signed, sealed, and delivered in the presence of:

F. E. LUCAS.

State of Washington, }  
County of Spokane. } ss.

I, W. M. Shaw, a notary public in and for said county and State, do hereby certify that on this seventh day of March, A. D. 1896, personally appeared before me, Patrick Clark and his wife, Mary R. Clark, to me known to be the individuals described in and who executed the within instrument, and acknowledged that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 7th day of March, A. D. 1896.

[Seal]

W. M. SHAW,  
Notary Public, Residing at Spokane, Washington.

State of Idaho, }  
County of Shoshone. } ss.

I hereby certify that the within instrument was filed for record in the office of the county recorder of said county, on the 26th day of August, A. D. 1899, at 9 o'clock A. M., at the request of F. R. Culbertson.

HORACE M. DAVENPORT,  
County Recorder.

State of Idaho, }  
County of Shoshone. } ss.

I, Horace M. Davenport, County Recorder in and for said county, do hereby certify that the foregoing copy of deed has been by me compared with the original and that it is a correct transcript therefrom as the same appears of record in book "14" of Deeds, on page 493 thereof, at my office and in my custody.

In testimony whereof, I hereunto set my hand and affix my official seal this 10th day of May, A. D. 1901.

[Seal] HORACE M. DAVENPORT,  
County Recorder.

[Ten Cents U. S. Int. Rev. Stamp. Canceled.]

[Endorsed]: (Certified Copy). Deed. Patrick Clark and wife, to F. R. Culbertson. Plffs. Ex. 7. E. J. L.

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Plaintiffs' Exhibit No. 8.  
Mining Deed.

This Indenture, made this 11th day of February, A. D. 1896, between James Harvey, of Burke, of the County of

Shoshone and State of Idaho, party of the first part, and F. R. Culbertson, of the County of Shoshone and State of Idaho, party of the second part,

Witnesseth: That the said party of the first part, for and in consideration of the sum of One and 00-100 Dollars, Gold Coin of the United States, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, remised, released and forever quitclaimed, and by these presents does grant, bargain, sell, remise, release and forever quitclaim, unto the said party of the second part, his heirs and assigns, the undivided one twentieth (1-20) interest in the Ella Fraction and Missing Link Fraction, as located, surveyed, recorded and held by said party of the first part, situated at Burke, in the Lalande Mining District, Shoshone County, State of Idaho, together with all the dips, spurs and angles, and also all the metals, ores, gold and silver-bearing quartz, rock and earth therein, and all the rights, privileges and franchises, thereto incident, appendant and appurtenant, or therewith usually had and enjoyed, and also all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances.

To have and to hold all and singular the said prem-

ises together with the appurtenances and privileges thereto incident, unto the said party of the second part, his heirs and assigns forever.

In Testimony Whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

JAMES P. HARVEY. [Seal]

Signed, sealed, and delivered in the presence of:

State of Idaho, }  
County of Shoshone. } ss.

I, H. M. Davenport, a notary public, in and for said county and State, do hereby certify that on this 24th day of February, A. D. 1896, personally appeared before me James P. Harvey, to me known to be the individual described in and who executed the within instrument, and acknowledged that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and official seal this 24th day of February, A. D. 1896.

[Seal]

H. M. DAVENPORT,  
Notary Public.

State of Idaho, }  
County of Shoshone. } ss.

I hereby certify that the within instrument was filed for record in the office of the County Recorder of said

county, on the 26th day of August, A. D. 1899, at 9 o'clock A. M., at the request of F. R. Culbertson.

HORACE M. DAVENPORT,  
County Recorder.

State of Idaho,  
County of Shoshone. } ss.

I, Horace M. Davenport, County Recorder in and for said county, do hereby certify that the foregoing copy of Deed, has been by me compared with the original and that it is a correct transcript therefrom as the same appears of record in Book "14" of Deeds, on page 494 thereof, at my office and in my custody.

In Testimony whereof, I hereunto set my hand and affix my official seal this 10th day of May, A. D. 1901.

[Seal] HORACE M. DAVENPORT,  
County Recorder.

[Ten Cents U. S. Int. Rev. Stamp. Canceled.]

[Endorsed]: (Certified Copy). Deed. James P. Harvey, to F. R. Culbertson. Plffs. Ex. S. E. J. L.

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**Plaintiffs' Exhibit No. 9.**

**Mining Deed.**

This Indenture, made this 25th day of August, A. D. 1899, between Jas. Clark and Charlotte Clark, his wife, of the County of Spokane and State of Washington, parties of the first part, and F. R. Culbertson, of the County of Shoshone and State of Idaho, party of the second part,

Witnesseth: That the said parties of the first part,

for and in consideration of the sum of One (\$1.00) Dollars, Gold Coin of the United States, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, remised, released, and forever quitclaimed, and, by these presents, does grant, bargain, sell, remise, release and forever quitclaim unto the said party of the second part, his heirs and assigns, the undivided one-twentieth (1-20) interest in the Ella Fraction and Missing Link Fraction lode quartz claims, as located, surveyed, recorded and held by said party of the first part, situated at Burke, Idaho.

This deed is executed and delivered in lieu of a former deed between the same parties and for the same interest in said claims which said deed has been lost or destroyed; Lalande Mining District, Shoshone County, State of Idaho, together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver-bearing quartz, rock and earth therein, and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part of, in or to the said premises and every part and parcel thereof, with the appurtenances.

To have and to hold all and singular the said prem-



ises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, his heirs and assigns forever.

In Testimony Whereof, the said parties of the first part have hereunto set their hand and seal the day and year first above written.

JAMES CLARK. [Seal]

CHARLOTTE CLARK. [Seal]

Signed, sealed and delivered in the presence of:

CHAS. S. ELTINGE.

[U. S. I. R. 50c. stamp attached.]

State of Washington, }  
County of Spokane. } ss.

I, Chas. S. Eltinge, a Notary Public, in and for said county and State, do hereby certify that on this 7th day of September, A. D. 1899, personally appeared before me, James Clark and Charlotte Clark, his wife, to me known to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Given under my hand and official seal, this 7th day of September, A. D. 1899.

[Seal]

CHAS. S. ELTINGE,

Notary Public in and for said County and State, Residing at Spokane, Washington.

[U. S. I. R. stamps, 10c. attached.]

State of Idaho, }  
County of Shoshone. } ss.

I hereby certify that the within instrument was filed

for record in the office of the County Recorder of said county on the 9th day of September, A. D. 1899, at 2 o'clock P. M., at the request of F. R. Culbertson.

HORACE M. DAVENPORT,  
County Recorder.

State of Idaho, }  
County of Shoshone. } ss.

I, Horace M. Davenport, County Recorder in and for said county, do hereby certify that the foregoing copy of Deed, has been by me compared with the original and that it is a correct transcript therefrom as the same appears of record in Book "15" of Deeds, on page 532 thereof, at my office and in my custody.

In Testimony whereof, I hereunto set my hand and affix my official seal this 10th day of May, A. D. 1901.

[Seal] HORACE M. DAVENPORT,  
County Recorder.

[Ten Cents U. S. Int. Rev. Stamp. Canceled.]

[Endorsed]: (Certified Copy). Deed. James Clark, and wife, to F. R. Culbertson. Plffs. Ex. 9. E. J. L.

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**Plaintiffs' Exhibit No. 10.**

**Mining Deed.**

This Indenture, made this 6th day of February, A. D. 1896, between B. C. Kingsbury, of the County of Spokane and State of Idaho, party of the first part, and F. R. Culbertson, of the County of Shoshone, and State of Idaho, party of the second part,



Witnesseth: That the said party of the first part, for and in consideration of the sum of One Dollars, Gold Coin of the United States, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, remised, released and forever quitclaimed, and by these presents does grant, bargain, sell, remise, release and forever quitclaim, unto the said party of the second part, his heirs and assigns, the undivided one-twentieth (1-20) interest in the Ella Fraction and the undivided one-twentieth (1-20) interest in the Missing Link claim, as located, surveyed, recorded and held by said party of the first part, situated at Burke, in the Lalande Mining District, Shoshone County, State of Idaho, together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver-bearing quartz, rock and earth therein, and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances.

To have and to hold all and singular the said premises, together with the appurtenances and privileges

thereto incident, unto the said party of the second part, his heirs and assigns forever.

In Testimony Whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

BENJAMIN C. KINGSBURY. [Seal]

Signed, sealed, and delivered in the presence of:

F. E. LUCAS.

State of Washington, }  
County of Spokane. } ss.

I, W. M. Shaw, a Notary Public in and for said county and State, do hereby certify that on this seventh day of March, A. D. 1896, personally appeared before me Benjamin C. Kingsbury, to me known to be the individual described in and who executed the within instrument, and acknowledged that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and official seal, this 7th day of March, A. D. 1896.

[Seal]

W. M. SHAW,

Notary Public, Residing at Spokane, Washington.

State of Idaho, }  
County of Shoshone. } ss.

I hereby certify that the within instrument was filed for record in the office of the County Recorder of said

county on the 26th day of August, A. D. 1899, at 9 o'clock A. M., at the request of F. R. Culbertson.

HORACE M. DAVENPORT,  
County Recorder.

State of Idaho,                    )  
County of Shoshone.            ) ss.

I, Horace M. Davenport, County Recorder in and for said county, do hereby certify that the foregoing copy of Deed, has been by me compared with the original and that it is a correct transcript therefrom as the same appears of record in Book "14" of Deeds, on page 496 thereof, at my office and in my custody.

In testimony whereof, I hereunto set my hand and affix my official seal this 10th day of May, A. D. 1901.

[Seal]                                   HORACE M. DAVENPORT,  
County Recorder.

[Ten Cents U. S. Int. Rev. Stamp. Canceled.]

[Endorsed]: (Certified Copy). Deed. B. C. Kingsbury, to F. R. Culbertson. Plffs. Ex. 10. E. J. L.

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**Plaintiffs' Exhibit No. 11.**

**Mining Deed.**

This Indenture, made the thirteenth day of October, in the year of our Lord one thousand eight hundred and ninety-nine, between Patrick Clark, B. C. Kingsbury, James Clark and James P. Harvey, the parties of the first part, and the Buffalo Hump Mining Company, a corporation organized and existing under and by virtue of the

laws of the state of New York, the party of the second part,

Witnesseth: That the said parties of the first part, for and in consideration of the sum of Four Thousand Dollars, Gold Coin of the United States of America, to them in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey, unto the said party of the second part, and to its successors and assigns forever, an undivided four-fifths (4-5) interest in and to those certain mining claims known as the "Ella" and "Missing Link," situate in the Lalande Mining District, Shoshone County, State of Idaho.

Together with all the dips, spurs and angles, and also all the metals, ores, gold and silver-bearing quartz, rock and earth therein, and all the rights, privileges and franchises thereto incident, appendant and appurtenant or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments and appurtenances thereunto belonging, and the rents, issues and profits thereof; and also all the estate, right, title, interest, possession, claim and demand whatsoever, as well in law as in equity, and as well in possession as in expectancy, of the said parties of the first part, in and the above granted premises, and every part and parcel thereof.

To have and to hold all and singular the said above granted premises, with the appurtenances and privileges

thereto incident unto the said party of the second part, its successors and assigns forever.

In Witness Whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

PATRICK CLARK. [Seal]

B. C. KINGSBURY. [Seal]

JAMES CLARK. [Seal]

JAS. P. HARVEY. [Seal]

Signed, sealed and delivered in the presence of

A. L. KEMPLAND.

CHAS. KLEIN.

[U. S. I. R. \$4.00 stamps attached.]

State of Washington, }  
County of Spokane. } ss.

On this 20th day of October, A. D. 1899, before me, a Notary Public in and for said County and State, personally appeared Patrick Clark, B. C. Kingsbury, James Clark and James P. Harvey, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Testimony Whereof, I have hereunto set my hand and official seal, the day and year in this certificate above written.

[Seal]

CHAS. ELTINGE,  
Notary Public in and for the State of Washington, Residing at Spokane, Washington.

Recorded at the request of F. Lewis Clark, October 21,  
1899, at 2 o'clock P. M.

HORACE M. DAVENPORT,  
County Recorder.

State of Idaho, }  
County of Shoshone. } ss.

I, Horace M. Davenport, County Recorder in and for  
said county, do hereby certify that the foregoing copy  
of Deed, has been by me compared with the original and  
that it is a correct transcript therefrom as the same ap-  
pears of record in Book "15" of Deeds, on page 32 there-  
of, at my office and in my custody.

In testimony whereof, I hereunto set my hand and  
affix my official seal this 10th day of May, A. D. 1901.

[Seal]

HORACE M. DAVENPORT,  
County Recorder.

[Ten Cents U. S. Int. Rev. Stamp. Canceled.]

[Endorsed]: (Certified Copy). Deed. Patrick Clark  
et al., to Buffalo Hump Mining Company. Plffs. Ex. 11.  
E. J. L.

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Plaintiffs' Exhibit No. 12.

UNITED STATES OF AMERICA.

STATE OF WASHINGTON.

Office of the

SECRETARY OF STATE.

I, Will D. Jenkins, Secretary of State of the State of



Washington, do hereby certify that I have carefully compared the annexed copy of the

ARTICLES OF INCORPORATION  
of the  
CONSOLIDATED TIGER AND POORMAN MINING  
COMPANY,

with the original articles of incorporation, as filed for record and recorded in this office on the 27th day of August, A. D. 1895, at page 237, book 11, Domestic Corporations, and find the same to be a true and perfect copy thereof.

In Testimony Whereof, I have hereunto set my hand and affix the Seal of the State of Washington.

Done at Olympia, this fifth day of January, 1900.

[Seal]

WILL D. JENKINS,  
Secretary of State.

ARTICLES OF INCORPORATION  
of  
THE CONSOLIDATED TIGER AND POORMAN MINING  
COMPANY.

Know all men by these presents: That we, the undersigned, all of whom are citizens of the United States, and a majority of whom are residents of the State of Washington, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the State of Washington, and to that end we do hereby certify as follows:

Article I.

The name of said Corporation shall be THE CONSOLIDATED TIGER & POORMAN MINING COMPANY.

## Article II.

The objects for which said Corporation is formed are: To engage in the business of mining and milling and smelting ores and minerals of all kinds; to own, sell, buy, lease, operate, mine, and develop mines, mining claims, mills, mill sites, flumes, dykes, ditches, water rights, tramways, trailroads; and more particularly to buy, operate and mine the Tiger and Poorman mines, mills and all appurtenances thereunto, belonging or therewith connected; situate at the town of Burke, in the LeLande Mining District, Shoshone County, Idaho.

## Article III.

That the amount of the capital stock of said Corporation shall be One Million (\$1,000,000) Dollars, divided into one million (1,000,000) shares of the par value of one dollar each.

## Article IV.

That the term for which said Corporation is formed is Fifty (50) years from and after this date.

## Article V.

That the number of trustees of said corporation shall be Five (5), and the names and residences of the Trustees who are appointed to manage the concerns of the Corporation for Six (6) months from this date, and until the election and qualification of their successors, are S. S. Glidden, Spokane, Washington; F. R. Culbertson, Burke, Idaho; Patrick Clark, Spokane, Washington; B. C. Kingsbury, Spokane, Washington; and E. D. Olmstead, Spokane, Washington.



## Article VI.

That the principal place of business of this corporation shall be at the City of Spokane, State of Washington; and that this Corporation may have such other branch places of business in the States of Washington and Idaho, as the Board of Trustees may designate.

In witness whereof, we have hereunto set our hands and seals in triplicate, this 26th day of August, A. D. 1895.

S. S. Glidden. [Seal]

F. R. Culbertson. [Seal]

Patrick Clark. [Seal]

B. C. Kingsbury. [Seal]

E. D. Olmstead. [Seal]

State of Washington, }  
County of Spokane. } ss.

Be it remembered, That on the 26th day of August, A. D. 1895, before me, the undersigned, a Notary Public in and for the said county and state, personally appeared S. S. Glidden, F. R. Culbertson, Patrick Clark, B. C. Kingsbury, and E. D. Olmstead, to me known to be the persons named and described in and who subscribed their names to the within and foregoing Articles of Incorporation, and acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and official seal the day and year in this certificate above written.

[Notarial Seal]

CHAS. R. BROWN,

Notary Public for the State of Washington, Residing at  
Spokane.

[Endorsed]: Certified Copy of the Articles of Incorporation of the Consolidated Tiger and Poorman Mining Company. State of Washington. Department of State, Olympia. Will D. Jenkins, Secretary of State. Plffs. Ex. 12. C. H. S.

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Plaintiffs' Exhibit No. 13.

**Mining Deed.**

This Indenture, made this 7th day of October, 1895, between Stephen S. Glidden, and Sue M. Glidden, his wife, residents of the City of Spokane, County of Spokane, State of Washington, parties of the first part, and the Consolidated Tiger & Poorman Mining Company, a corporation organized under the laws of the State of Washington, with its principal place of business at Spokane, party of the second part, Witnesseth: That the said parties of the first part, for and in consideration of Five Hundred Thousand (500,000) shares of the Capital stock of the said Consolidated Tiger & Poorman Mining Company, of the Par value of One Dollar (\$1.00) per share, receipt of which is hereby acknowledged, have, and by these presents do grant, bargain, sell and convey unto the said party of the second part, its successors and assigns, all of the following described real estate, premises, mining claim, and

property. All situated in the Lalande Mining District, Shoshone County, Idaho, and more particularly described as follows, to wit: the Tiger mine, a silver-lead mine located originally by John Carton and Armendas Seymour, and by them conveyed to the first party, S. S. Glidden, said mine being since then patented by the government of the United States to the first party, S. S. Glidden, by its letters patent dated the 20th day of December, 1894, said patent being of record in the Recorder's Office of said Shoshone County, at Murray, Idaho, said mine situate on the mountain sloping westerly from Canyon Creek, immediately west of and adjoining the Poorman lode, at the Town of Burke, said county and state; together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver-bearing quartz, rock, and earth therein, and all the rights, privileges and franchises thereto, incident, appendant, and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the rents, issues and profits thereof; and also all the estate right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in or to, the said premises, and every part and parcel thereof, with the appurtenances; together with the mill or concentrator called the Tiger Concentrator, shops, sheds, ore houses, ore bins, machinery, appliances thereof, connected or thereunto belonging, situate in and about said mine and concentrator; also those certain water rights

and dams or water reservoirs on said Canyon Creek above the said town of Burke, owned by the first parties and by them used for conducting water to said Tiger mine either to create power for the running of said mill or concentrator, or other purposes, together with those water courses conducting the water from said reservoirs or dams to the place of intended use; also that certain electric light plant connected with said Tiger mine and mill used to furnish light and partial power therefor, with the attachments, machinery and appliances thereunto connected.

To have and to hold, all and singular, the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, its successors and assigns forever, and the above-bargained and granted lands and mines, premises and hereditaments, corporeal and incorporeal, in the quiet and peaceful possession of the said party of the second part, its successors and assigns, against all persons lawfully claiming or to claim the whole or any part thereof, the said first parties will warrant and defend.

And do also grant, bargain, sell, convey, and forever quitclaim, unto the said second party, its successors and assigns, that certain lode mining claim, known as and called The Wide West, situate on George Gulch, near its junction with Canyon Creek, on the northeasterly slope thereof, as the same was located, recorded and is now held by the first parties, being in the Lalande Mining District, Shoshone County, Idaho; together with all the dips, spurs, and angles, and also all the metals, ores, gold

and silver-bearing quartz, rock and earth therein, and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the rents, issues and profits thereof, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, or to, the said premises, and every part and parcel thereof, with the appurtenances, to have and to hold all and singular the said premises, together with the appurtenances and privileges thereunto incident, unto the said party of the second part, its successors and assigns forever.

And do also grant, bargain, sell, convey and forever quitclaim, unto the said second party, its successors and assigns, the undivided one-half of the certain tract of land owned jointly by the first party and the Coeur d'Alene Silver-Lead Mining Company, a corporation, lying between what is called "the Tiger Overflow" and the John Stack boarding house, in the town of Burke, in the Lalande Mining District, Shoshone County, Idaho, to have and to hold, all and singular, the said premises, together with the appurtenances and privileges thereunto incident, unto the said party of the second part, its successors and assigns, forever.

In Testimony Whereof, the said first parties of the first part, have hereunto set their hands and seals the day and year first above written.



STEPHEN S. GLIDDEN. [Seal]

SUE M. GLIDDEN. [Seal]

Signed, Sealed, and Delivered in presence of:

W. D. VINCENT.

WM. L. LUHN.

State of Washington }  
County of Spokane. } ss.

This is to certify that on this seventh day of October, A. D. 1895, before, me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally came Stephen S. Glidden and Sue M. Glidden, his wife, to me known to be the individuals described in and who executed the within instrument, and acknowledged to me that they signed and sealed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal, the day and year in this certificate first above written.

[Seal]

WM. L. LUHN,

Notary Public in and for the State of Washington, Residing, at Spokane, Washington.

Recorded at the request of W. T. Stoll, Oct. 17th, 1895, at 2 o'clock P. M.

BARRY N. HILLARD,

County Recorder.

By John P. Sheehy,

Deputy.





of the O'Neil lode claim, the undivided one-half ( $\frac{1}{2}$ ) of the Sheridan lode claim, and the undivided one-half ( $\frac{1}{2}$ ) of that certain tract of land owned jointly by the Coeur d'Alene Silver-Lead Mining Company, and S. S. Glidden, and lying between the "Tiger Overflow" and the John Stack boarding house, all situate at the town of Burke, in the Lalande Mining District, Shoshone County, Idaho, together with the mill or concentrator, shops, sheds, ore houses, ore bins, machinery, appliances, improvements, dams, water courses, water rights, electric light plant, offices and manager's house, tools, and all the appurtenances thereunto belonging or therewith connected, and belonging to the Coeur d'Alene Silver-Lead Mining Company, at which more than three-fourths ( $\frac{3}{4}$ ) of the Capital Stock of the said Coeur d'Alene Silver-Lead Mining Company was present and represented, and more than two-thirds of all said capital stock having voted in favor of selling said property, mining claims and premises to said Consolidated Tiger and Poorman Mining Company; and thereby, and by resolutions authorizing the undersigned president and secretary of the said Coeur d'Alene Silver-Lead Mining Company to make proper deeds of conveyance therefor;

Now, Therefore, in Consideration of the premises, this indenture made this 13th day of October, 1895, between the Coeur d'Alene Silver-Lead Mining Company, a corporation organized under the laws of the Territory, now State of Montana, party of the first part, and The Consolidated Tiger & Poorman Mining Company, a corporation, organized under the laws of the State of Washington, party of the second part.

Witnesseth: That the said party of the first part, for and in consideration of Five Hundred Thousand (500,000) shares of the Capital stock of the Consolidated Tiger & Poorman Mining Company of the par value of One Dollar (\$1.00) per share, the receipt of which is hereby acknowledged, has, and by these presents does grant, bargain, sell and convey unto the said party of the second part, its successors and assigns, all of the following described real estate, premises, mining claims, and property, all situated in the Lalande Mining District, Shoshone County, Idaho, and more particularly described as follows, to wit: The Poorman mine, a silver-lead mine, patented by the government of the United States to the first party by its letters patent dated 10th day of Jany., 1891, said patent being of record in the Recorder's office in the said Shoshone County, at Murray, Idaho, and said mines situate on the mountain sloping easterly from Canyon Creek immediately west of and adjoining the Tiger lode at the Town of Burke, said County and State, together with all the dips, spurs and angles, and also all the metals, ores, gold and silver-bearing quartz, rock and earth therein, and all the rights, privileges and franchises thereto incident, appendant and appurtenant or therewith usually had and enjoyed, and also all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the rents, issues and profits thereof, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the the said parties of the first part of, in or to the said

premises, and every part and parcel thereof with the appurtenances; together with the mill or concentrator called the Poorman Concentrator, the shops, sheds, ore houses, ore bins, machinery, and appliances thereto connected or thereunto belonging, situate in and about said mine and concentrator; also those certain water rights and dams, or water reservoirs on Canyon Creek above said town of Burke, owned by the first party, and by it used for conducting water to the said Poorman Mine, and to its electric light and power plant, or elsewhere, together with those water courses conducting the water from said reservoirs or dams to the plants for use; also that certain electric light plant connected with said Poorman mine and mill used to furnish light and power therefore, with the attachments, machinery, and appliances thereunto connected.

To have and to hold all and singular the premises, together with the appurtenances and privileges thereto incident unto the said party of the second part, its successors and assigns forever, the above bargained and granted lands and mines, premises and hereditaments, corporeal and incorporeal, in the quiet and peaceable possession of the said party of the second part, its successors and assigns, against all persons lawfully claiming or to claim the whole or any part thereof, the said first party will warrant and defend.

And does also grant, bargain, sell, convey, and forever quitclaim unto said second party, its successors and assigns, the undivided one-third ( $\frac{1}{3}$ ) of, in and to the O'Neil lode claim lying easterly of the said Poorman mine and

separated from the said Poorman mine heretofore described only by the Ella and Missing. Link fractions supposed to be on the Tiger-Poorman lode, also the undivided one-half ( $\frac{1}{2}$ ) of the Sheridan lode claim lying south of and adjoining the Tiger mine and the Poorman mine, both said O'Neil and said Sheridan lodes lying and being in the County of Shoshone, State of Idaho, in the Lalande Mining District at the Town of Burke, on Canyon Creek, together with all the dips, spurs, and angles, and also all the metals, ores gold and silver-bearing quartz, rock and earth therein and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed, and also all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the rents, issues and profits thereof, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity of the said parties of the first part of, in or to the said premises and every part and parcel thereof, with the appurtenances.

To have and to hold all and singular the said premises together with the appurtenances and privileges thereto incident unto the said party of the second part its successors and assigns forever.

And does also grant, bargain, sell, convey and forever quitclaim unto the second party, its successors and assigns those certain offices and residences used by it as the residence of its manager, and for its offices, situate on a little rise at the junction of Gorge Gulch with Can-

yon Creek, a short distance above the town of Burke, together with the land upon which the same stands; also the undivided one-half ( $\frac{1}{2}$ ) of that certain tract of land owned jointly by the first party and S. S. Glidden, and lying between "The Tiger Overflow," and the John Stack boarding house, at the town of Burke, Lalande Mining District, Shoshone County, Idaho.

To have and to hold the same together with the appurtenances thereunto belonging unto the party of the second part, its successors and assigns forever.

In witness whereof its president has attached hereto the corporate name, and caused to be affixed the Corporate seal, the day and year above written.

THE COEUR d'ALENE SILVER-LEAD MINING CO.,

[Corporate Seal]

By B. C. KINGSBURY,

President.

ROBERT GRIX,

Secretary.

Signed, Sealed and Delivered in the presence of:

C. H. PALMER.

W. T. STOLL.

State of Montana,                    }  
County of Silver Bow,            } ss.

On this 12th day of October in the year 1895, before me, Joseph A. Lewis, a Notary Public, in and for the County of Silver Bow, State of Montana, personally appeared B. C. Kingsbury, known to me to be the President of the Coeur d'Alene Silver-Lead Mining Co., the Cor-



poration that executed the within instrument, and acknowledged to me that such Corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my notarial seal the day and year first above written.

[Seal] JOSEPH A. LEWIS,  
Notary Public, in and for the County of Silver Bow.

Recorded at the request of W. T. Stoll, Oct. 17, 1895,  
at 2 o'clock P. M.

BARRY N. HILLARD,  
County Recorder.  
By Chas. A. Ervin,  
Deputy.

On the margin of the Record appears the following note:

The Resolution of the Coeur d'Alene Silver-Lead Mining Company, authorizing the making of this Deed is of Record in Book "L" of Miscellaneous, at page 214 thereof Records of Shoshone County, Idaho.

BARRY N. HILLARD,  
County Recorder.  
By Chas. A. Ervin,  
Deputy.

State of Idaho,                    )  
County of Shoshone.            ) ss.

I, Horace M. Davenport, County Recorder, in and for said County, do hereby certify that the foregoing copy of Deed, has been by me compared with the original, and

that it is a correct transcript therefrom as the same appears of record in Book "9" of Deeds, on page 461 thereof, at my office and in my custody.

In testimony whereof, I hereunto set my hand and affixing official seal this 28th day of September, A. D. 1901.

[Seal]

HORACE M. DAVENPORT,

County Recorder.

By John P. Sheehy,

Deputy.

[Endorsed]: (Certified Copy.) Of Deed from Coeur d'Alene Silver-Lead Mining Company, to The Consolidated Tiger and Poorman Mining Company. Plffs. Ex. 14.

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**Plaintiffs' Exhibit No. 15.**

**Mining Deed.**

This Indenture made this 20th day of October, A. D. 1899, between Patrick Clark, of the City and County of Spokane, State of Washington, party of the first part, and the Buffalo Hump Mining Company, a corporation organized and existing under and by virtue of the laws of the State of New York, party of the second part.

Witnesseth: That the said party of the first part, for and in consideration of the sum of Three Thousand Dollars (\$3,000) Gold Coin of the United States, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, remised, released and forever quitclaimed, and by these presents does grant, bargain, sell, remise,



release and forever quitclaim unto the said party of the second part, its successors and assigns, an undivided one-half ( $\frac{1}{2}$ ) interest in and to that certain mining claim known as the "Sheridan" situate in the Lalande Mining District, Shoshone County, State of Idaho; together with all the dips, spurs and angles, and also all the metals, ores, gold and silver-bearing quartz, rock and earth therein, and all the rights, privileges and franchises thereto incident, appendant and appurtenant or therewith usually had or enjoyed; and also all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances.

To Have and To Hold, all and singular, the said premises, together with the appurtenances and privileges thereto incident unto the said party of the second part, its successors and assigns forever.

In Testimony Whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

PATRICK CLARK. [Seal]

Signed, Sealed and Delivered in the presence of:

A. L. KEMPLOND.

CHASE KLEIN.

State of Washington, }  
County of Spokane, } ss.

On this 20th day of October, A. D. 1899, before me, a Notary Public, in and for said County and State, personally appeared Patrick Clark, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In Testimony Whereof, I have hereunto set my hand and official seal the day and year in this certificate above written.

[Seal] CHAS. S. ELTINGE,  
Notary Public in and for the State of Washington, Residing at Spokane, Wash.

[U. S. I. R. 3.00 stamp attached.]

Recorded at the request of F. Lewis Clark, Oct. 21, 1899, at 2 o'clock P. M.

HORACE M. DAVENPORT,  
County Recorder.

State of Idaho, }  
County of Shoshone. } ss.

I, Horace M. Davenport, County Recorder in and for said County, do hereby certify that the foregoing copy of Deed has been by me compared with the original, and that it is a correct transcript therefrom as the same appears of record in Book "15" of Deeds, on page 31 thereof, at my office and in my custody.

In testimony whereof, I hereunto set my hand and affix

my official seal this 30th day of September, A. D. 1901.

[Seal]

HORACE DAVENPORT,

County Recorder.

[Endorsed]: (Certified Copy.) Of Deed from Patrick Clark to Buffalo Hump Mining Company. Recorded Oct. 21, 1899. Plffs. Ex. 15.

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**Plaintiffs' Exhibit No. 16.**

**Mining Deed,**

This Indenture, made this 20th day of November, A. D. 1899, Between F. R. Culbertson of the County of Shoshone and State of Idaho, party of the first part, and the Buffalo Hump Mining Company of the County of ———, and State of New York, party of the second part, Witnesseth, That the said party of the first part, for and in consideration of the sum of One thousand & 00-100 Dollars, Gold Coin of the United States to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, remised and forever quitclaimed and by these presents does grant, bargain, sell, remise, release and forever quitclaim unto the said party of the second part, their heirs and assigns the undivided one (1-5) fifth interest in the "Ella Fraction" and "Missing Link" Fraction Lode claims, as located, surveyed, recorded and held by said party of the first part, situated in Lalande Mining District, Shoshone County, Idaho, and bounded on the West by the Poorman Lode Claim and on the East by the O'Neal Lode claim, said claims, situated at Burke,

Idaho, in Lalande Mining District, Shoshone County, State of Idaho, together with all the dips, spurs and angles, and also all the metals, ores, gold and silver-bearing quartz, rock and earth therein, and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity of the said part of the first part, of, in or to the said premises and every part and parcel thereof, with the appurtenances.

To have and to hold, all and singular, the said premises, together with the appurtenances and privileges thereto incident unto the said party of the second part, their heirs and assigns forever.

In Testimony Whereof, The said party of the first part has hereunto set his hand and seal the day and year first above written.

F. R. CULBERTSON. [Seal]

Signed, Sealed and Delivered in the presence of:

WM. H. SMITH.

[U. S. I. R. \$11.00 stamp attached.]

State of Idaho,                    }  
County of Shoshone.            } ss.

I, Wm. H. Smith, a Notary Public, in and for said County and State, do hereby certify that on this 20th day

of November, A. D. 1899, personally appeared before me F. R. Culbertson, to me known to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

Given under my hand and official seal this 20th day of November, A. D. 1899.

[Seal]

WM. H. SMITH,

Notary Public in and for said County and State.

State of Idaho,                    )  
County of Shoshone.            ) ss.

I hereby certify that the within instrument was filed for record in the office of the County Recorder of said County on the 9th day of December A. D. 1899, at 2 o'clock P. M. at the request of F. Lewis Clark, Treas.

HORACE M. DAVENPORT,

County Recorder.

State of Idaho,                    )  
County of Shoshone.            ) ss.

I, Horace M. Davenport, County Recorder in and for said County, do hereby certify that the foregoing copy of Deed has been by me compared with the original, and that it is a correct transcript therefrom as the same appears of record in Book "15" of Deeds, on page 190 thereof, at my office and in my custody.

In testimony whereof, I hereunto set my hand and affix my official seal this 28th day of September, A. D. 1901.

[Seal]

HORACE DAVENPORT,

County Recorder.

By John P. Sheehy,

[Endorsed]: (Certified Copy.) Of Deed from F. R. Culbertson to Buffalo Hump Mining Company. Plffs. Ex. 16.

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Plaintiffs' Exhibit No. 17.

General Manager's Report for the Year Ending April 30th, 1901.

Office of

EMPIRE STATE-IDAHO MINING AND DEVELOPING COMPANY,

Stokes Building, 45 Cedar Street, New York.

Edwin Packard, President.

George Cox, Jr., Vice-President.

Bruce Clendenning, Treasurer.

F. J. Kilner, Secretary.

Chas. Sweeny, General Manager.

Gentlemen: Since my last annual report several important changes have taken place in the affairs of your Company.

In December of last year your Directors decided to increase the capital stock of the Company from 100,000 shares to 600,000 shares of the par value of \$10 per share. This for the purpose of acquiring other properties and placing ourselves in a position to command a leading place in the lead markets of this country.

In January of this year we purchased the Tiger-Poorman mines, at Burke, Idaho, which were formerly operated by the Buffalo Hump Mining Company, the consideration being \$2,100,000, payable in stock of your company at par. In the new capitalization the share-



holders of the Empire-State Idaho Mining and Developing Company were allowed three shares of stock for each share previously held; 90,000 shares remain in the treasury of your company as a reserve fund. The Tiger-Poorman properties are now worked in connection with your properties at Wardner under one management, thereby effecting a considerable saving in the general operating expenses of the two properties.

I recall your attention to the fact that at the present time your company is the largest lead producer in the United States, if not in the world, having a shipping capacity of over 4,000 tons of concentrates per month, or, say, yearly shipments of about 50,000 tons. This is equal to 25 per cent. of the entire output of the Coeur d'Alene lead district, which section of the country is recognized as producing at least 50 per cent. of the lead output of the United States. In other words, your company is able to furnish about one-eighth of the entire lead output of the United States, and is in a position to secure the best market prices for our product.

#### WARDNER MINE.

The operations at Wardner have been satisfactory throughout the year, and our shipments from that point have shown a steady increase, being from May 1st, 1900, to May 1st, 1901, 22,480 tons, against 17,864 tons for the year previous. Development work throughout the mine has been well advanced during the year, and the property is in better shape to-day than ever before to economically handle the ore as well as to increase the output, the principle development work during the year being the con-



tinuation of the Sweeny tunnel a distance of 942 feet through the mountain, coming out at the surface in Deadwood Gulch. This Sweeny tunnel from portal to portal is 5,500 feet long. The tunnel has been laid with 30 pound T-rails, and will be used as the main passage-way for the outlet of the ore to the new mill that has been built during the year at the mouth of Government Gulch, the ore from the mine being dumped direct into the ore bins at the mouth of the new tunnel, and from there transported by railroad to the new mill, these two points having been connected with a branch of the Oregon Railroad and Navigation Company by a spur track 4 miles long. The railroad spur will not be ready for traffic before June 1st, 1901, after which time a material reduction in mining expenses will be made, owing to the fact that wagon transportation for mining supplies will be done away with, the railroad delivering the mine timbers, lumber, and fuel direct to the mouth of the tunnel, making a saving over wagon freights, as heretofore, of over \$10,000 per year.

A shaft to the depth of 150 feet has been sunk on the vein during the year, and the ore bodies at this depth are now being opened up. The showing is all that we could hope for, and the ore now being put in sight on this 150 foot level has largely added to our ore reserves. Prospecting has been vigorously pushed from the upper levels into what is known as the hanging wall country, and this development has opened up new ore bodies not heretofore worked. The new ore bodies have been sufficiently developed at different points between the Sweeny

level and the upper workings, a distance of something over 600 feet in height, to show that they are continuous between these two points, and have added very largely to our ore reserves.

The total amount of new development work done during the year in running new drifts, sinking and raising, has aggregated 6,675 feet of work, all of which has been satisfactory in every way. In addition to the above mentioned 6,675 feet of work there has been 801 feet of diamond drill work driven southerly and westerly from the west Sweeny tunnel. This diamond drill work has cut some new ore, but at this date, it has not been sufficiently opened up to fully determine the extent and size of the new ore bodies found by the diamond drill.

The New Empire tunnel, which was started last year, and will when finished cut the vein 650 feet vertically below the Sweeny tunnel and giving nearly 1,000 feet of stoping ground on the vein, has been driven during the year a distance of 679 feet. Work on this was temporarily suspended in October, owing to the fact that the development work in the mine (before referred to) had so largely added to our ore reserves that it removed the necessity of crowding this work until such time as we saw fit to take it up again.

#### NEW EMPIRE MILL.

A new concentrating mill has been constructed during the past year on the line of the Oregon Railroad and Navigation Company, at the mouth of Government Gulch, and connected with the mine by the branch road or spur before referred to. As soon as this branch is

completed for traffic (about June 1st) the new mill will be started up. The main buildings have been built for a capacity of 800 tons of crude ore per day of twenty-four hours, but for the present new machinery sufficient only to handle 400 tons per day has been installed, the intention being to dismantle the old mill now in operation at Wardner and remove such portions of the old machinery as can be utilized in increasing the capacity of the new mill. This new plant is a modern, up to date mill, fitted with the latest and most approved concentrating machinery. A close saving of the metal values as well as an economical handling of the ores is expected from the same.

The mill has been arranged to run by either steam or water power, but for the present will be operated by steam. Ore bins of sufficient capacity for several days' run of the concentrator has been provided for, both at the mill and at the mouth of the Sweeny tunnel, in order to prevent any shutting down should there be any temporary delay in the operation of the railroad.

The total cost of the new mill to May 1st has been \$55,074.83, including the cost of the mill ore bins. To this will be added the cost of the ore bins at the mouth of the Sweeny tunnel, construction of which has been delayed owing to the railroad not having been able at this date to deliver the lumber for the same at the mouth of the tunnel.

In the old mill at Wardner the only new machinery added during the past year has been two double-deck Wilfley tables. These will be removed to the new mill

after the same is started up. The work of the old mill has been fairly satisfactory, excepting that there has been a shortage of slime capacity, which is fully remedied in the new plant.

During the last year 131,668 tons of crude ore have been milled, producing 17,603 tons of concentrates, being an average of 8 tons of milling ore to 1 ton of concentrates.

In addition to the concentrates produced the mine has also shipped 4,877 tons of first-class ore, making the total shipments from this property for the year 22,480 tons, or a total gross value for the lead and silver contents of \$1,316,175.85.

Average shipments assayed 62.26 per cent lead and 23 $\frac{1}{4}$  ounces of silver per ton.

The average price received for the lead during the year was 4 cents per pound, and the average price received for silver was 61.8 cents per ounce. The average price for lead was 46-100 c. less per pound than the year previous, while the average price for silver was 2.36 cents higher per ounce, covering the same period.

The average number of men employed during the year in the mine, mill, office, and construction (outside of contract work on the Empire tunnel and the flume) was 223 men, and the daily average wages paid these men was \$3.53 each per shift.

#### PINE CREEK FLUME.

In my last annual report I referred to a flume to be built from the forks of Pine Creek, to furnish water and power for the new mill. This enterprise was started and

work prosecuted upon it until the latter part of October, when operations were suspended for the winter.

The new mill has been equipped with a steam plant and sufficient wash water for the mill has been secured elsewhere. It is also probable that in the near future a central electric power plant for the entire district will be inaugurated. If this is done the power can be furnished at a less expense than would be involved in the completion of the flume, and for this reason it was thought best to defer operations on this enterprise until later on.

#### PROPERTIES.

The properties now embraced in the Wardner district and held by your company number seventy-two claims and fractions of claims; twenty-one of these are held under patent from the Government; title to same being undisputed. On some of our other claims we have had continued litigation. At final adjudication the result has been in each case in our favor. During the past year, all decisions, with the exception of ore, have been satisfactory to us, this exception being a minor matter, and in the opinion of counsel certain to be reversed and decided in our favor on appeal. The decisions in our favor, if confirmed as we fully expect them to be, will be of great value to us in future years, affecting as they do ore bodies below our present workings and adding largely to the territory which is unquestionably ours.

A large number of the unpatented claims have been surveyed and patent applied for, and the balance will be



put into shape as soon as the necessary work can be done and patent papers secured on same.

In addition to the mining claims held by the company, we have 120 acres of patented land in Government Gulch, at the mouth of the Empire tunnel; 320 acres of patented land upon which is situated our new mill; also 120 acres of patented land at the mouth of Big Creek.

In addition to the above is one new concentrating plant just completed; one old concentrating plant in fair condition, a large compressor plant in first-class condition, mine offices, timber sheds, ore bins, blacksmith and carpenter shops, machine shops, and all the necessary out-buildings for the successful working of the property in the most economical manner.

#### BURKE BRANCH.

The Tiger-Poorman properties, situated at Burke, Idaho, and recently acquired by this company, consists of eighteen mining claims and fractions of claims, and cover a linear distance on Tiger and Poorman veins of 10,952 feet. Sixteen of these claims are patented, to which title is held by your company from the Government.

In addition to the above mineral claims your company are the owners of four water rights in connection with this property, which are improved and are used for power purposes and wash water for the concentrator.

The surface improvements in connection with this property consist of a 600 ton concentrating plant, arranged to run by water and steam power; a boiler plant, with 1,200 Horse Power; an electric power plant of 400 horse power capacity, which electric power is used for

operating the underground pumps; machine shops, blacksmith and carpenter, a well equipped hoisting plant of sufficient capacity to hoist 600 tons of ore per day to a vertical depth of 2,500 feet, together with the necessary outbuildings, sheds, etc., which go toward making the plant one of the most complete in all details in the Coeur d'Alene district.

This property, while operated by the Consolidated Tiger & Poorman Mining Company, owing to the loss of their surface improvements by fire, in 1896, which placed them in a bad condition financially, had been allowed to get behind in development work in the mine, and the property in a general way was in bad shape for its successful working. After the Buffalo Hump Mining Company secured it, and on the strength of the extensive new ore bodies and additional ore reserves put in sight by their development work, they increased the mill to 600 tons capacity in twenty-four hours, adding considerable machinery to the plant in the way of additional slime machinery for the mill, a new electric power plant with low flume; also put in an additional boiler capacity and additional hoisting facilities in the way of skips, put up a boarding house and other buildings, and had expended in the way of betterments to the property in improvements, additional machinery and development work in opening up new ore bodies something over \$100,000.

The property at the time it came into your possession being complete in every respect, there will be nothing



further needed in the way of improvements or additional machinery for some time to come.

Since January 1st, 1901, the mines have been in full operation until April 13th, since which time only one shift has been worked, the working of one shift being occasioned by a temporary over-production in the lead markets, and an arrangement having been entered into with the smelting companies with a view of curtailing the output of the Coeur d'Alene district until such time as this surplus could be used up. It was decided to make this reduction of output at the Burke end and run Wardner mines at full capacity. While this curtailment of product will somewhat reduce the profits of operations, owing to a certain amount of fixed charges which cannot be reduced in proportion to the reduction of the output, the Smelting Company has made us a liberal allowance on account of our voluntarily assisting them in bringing about this reduction in the surplus of lead on hand and the allowance received from the Smelting Company in addition to profits on the shipments, will enable us to keep up our regular monthly dividends.

During the four months from January 1st, 1901, to May 1st, 1901, the mill produced 6,684 tons of concentrates from 64,872 tons of ore; in addition to which there was shipped 165 tons of first-class ore.

The average shipments assayed 55.974 per cent lead and 25.755 ounces of silver per ton.

The average number of men employed in the operation of the property during the four months, 275 per day, and the average wages paid per shift was \$3.65.

During the last half of April, while only one shift was being worked, the average number of men employed was 145 per day, and this will be about the number of men employed until such time as we start up the property in its full capacity.

#### DEVELOPMENT.

During the last four months there was 1,054 feet of development work done, including the sinking of the main shaft 87 feet. This working shaft is now 1,700 feet deep from the collar of same. We have just cut our 1,700 work station, and are cross-cutting for the vein, the vertical distance between the 1,600 and the 1,700 feet levels, being 150 feet. This new level which we will get opened up some time in July, will give us an additional reserve of something over a year's supply of ore. There is nothing in the lowest workings to show any decrease in the values of the ore or in the quantity, and with cheap electric power later on, for pumping and general purposes, there is no reason why this property should not be worked profitably to a depth of 5,000 feet.

In this connection and in reference to our Wardner properties I might say that the Bunker Hill & Sullivan Mining Company, whose properties adjoin ours at Wardner, have within the last four months cut their vein with a deep working tunnel, cutting their ore bodies at the same depth that our Empire State tunnel will cut ours, and giving them (as our tunnel will give us when completed) something over 1,000 feet of stoping ground on the vein; this new Bunker Hill tunnel has opened up a fine body of high grade ore. Our claims adjoining each

other, as they do, and the same ore bodies passing through both bodies, this practically demonstrates the value of our ore bodies at this depth, assuring us a long life ahead for our Wardner properties.

For a full statement of our financial affairs, showing total receipts and disbursements for the year ending April 30th, 1901, I beg to refer you to our Treasurer's report, which will be given to you at this meeting.

Respectfully submitted,

CHARLES SWEENEY,

General Manager.

May 21st, 1901.

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### Plaintiffs' Exhibit No. 18.

#### Mining Deed.

This Indenture made the 7th day of September, in the year of Our Lord one thousand nine hundred, between Eleanor Truax O'Neil, widow of Charles W. O'Neil, late of Shoshone County, State of Idaho, by B. D. Crocker, her attorney in fact, the party of the first part, and the Buffalo Hump Mining Company, a corporation organized and existing under the laws of the State of New York, and doing business in said Shoshone County, the party of the second part,

Witnesseth: That the said party of the first part, for and in consideration of the sum of one dollar, lawful money of the United States of America, to her in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, has granted, bargained,

sold, and conveyed and by these presents does grant, bargain, sell, and convey unto the said party of the second part, and to its successors and assigns forever, all of the right, title and interest of the party of the first part in and to that certain quartz lode mining claim commonly known as and called "The O'Neil Lode Mining Claim," situated in the Lalande Mining District, Shoshone County, State of Idaho, and being the interests in said mining claim more fully described in that certain deed executed and delivered by W. J. Tretheway to said Charles W. O'Neil on the 20th day of May, A. D. 1892, which said deed was recorded in the County Recorder's office of said Shoshone County, on the 25th day of May, 1892, in Book "X" of Deeds, at page 612 thereof, and also that certain other deed made, executed and delivered by said W. J. Tretheway to said Charles W. O'Neil on the 8th day of June, 1892, which said deed was recorded on the 22d day of June, A. D. 1892, in the County Recorder's office of said Shoshone County, in Book "Y" of Deeds, at page 227 thereof. For a more particular description of said quartz lode mining claims reference is hereby made to the record of the United States Patent therefor duly recorded in said County Recorder's office on the 22d day of June, A. D. 1894, in Book 6 of Deeds, at page 429 thereof.

This instrument is executed and delivered by the said party of the first part for the purpose of making more definite and certain the description of the property intended to be conveyed by that certain deed of conveyance executed and delivered by the said party of the first part,



by the said B. D. Crocker, her Attorney in Fact, on the 29th day of September A. D. 1899, which said deed was duly recorded on the 21st day of October, A. D. 1899, in Book 15 of Deeds, at page 29 thereof, records of said Shoshone County, by which deed it was intended to convey to the said party of the second part all the right, title and interest in said above described property formerly owned by Charles W. O'Neil, and which deed in describing the source of said Charles W. O'Neil's title, referred only to the first of the deeds from W. J. Tretheway above mentioned and not the the second thereof, as it should have done in order to make said reference complete and true.

Together with all the dips, spurs and angles, and also all the metals, ores, gold and silver-bearing quartz, rock and earth therein, and all the rights, privileges and franchises thereto incident, appendant or appurtenant or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments and appurtenances thereunto belonging, and the rents, issues and profits thereof; and also all the estate, right, title, possession, claim and demand whatsoever, as well in law as in equity, and as well in possession as in expectancy, of the said party of the first part, in and to the above granted premises, and every part and parcel thereof.

To have and to hold, all and singular the said above granted premises, with the appurtenances and privileges thereto incident, unto the said party of the second part, its successors and assigns forever.

In Witness Whereof, the said party of the first part

has hereunto set her hand and seal, by B. D. Crocker, her attorney in fact, the day and year first above written.

ELEANOR TRUAX O'NEIL. [Seal]

By B. D. CROCKER, [Seal]

Her Attorney in Fact.

Signed, Sealed and Delivered in the presence of:

FRANCIS A. GARRICHT.

State of Washington, }  
County of Walla Walla. } ss.

On this 7th day of September A. D. 1900, before me, Francis A. Garrecht, a Notary Public for the State of Washington, residing at Walla Walla, Washington, personally appeared B. D. Crocker, known to me to be the person whose name is subscribed to the within instrument, as the Attorney in Fact of Eleanor Truax O'Neil, and acknowledged to me that he subscribed the name of Eleanor Truax O'Neil thereto as principal and his own name as attorney in fact.

In Testimony Whereof, I have hereunto set my hand and official seal at my office in Walla Walla, Washington, the day and year in this certificate above written.

[Seal]

FRANCIS A. GARRICHT,

Notary Public for the State of Washington, residing at Walla Walla, Washington.

Recorded at the request of Heyburn, Heyburn & Doherty, September 10th, 1900, at 2 o'clock P. M.

HORACE M. DAVENPORT,

County Recorder.

State of Idaho, }  
 County of Shoshone. } ss.

I, Horace M. Davenport, County Recorder in and for said County, do hereby certify that the foregoing copy of Deed has been by me compared with the original and that it is a correct transcript therefrom as the same appears of record in Book "18" of Deeds, on page 204 thereof, at my office and in my custody.

In testimony whereof, I hereunto set my hand and affix my official seal this 28th day of September, A. D. 1901.

[Seal]

HORACE M. DAVENPORT,

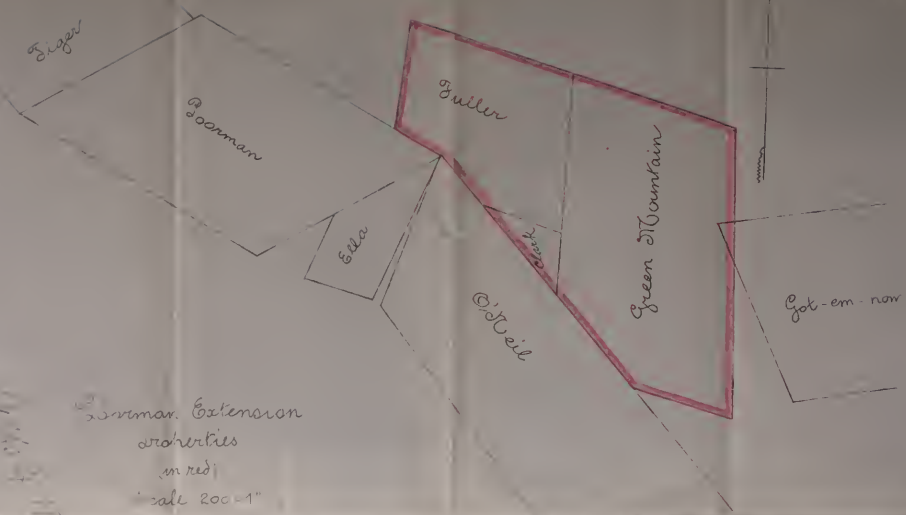
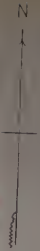
County Recorder.

By John P. Sheehy,

Deputy.

[Endorsed]: (Certified Copy.) Of Deed from Eleanor Truax O'Neil, by B. D. Crocker, her Attorney in Fact, to Buffalo Hump Mining Company. Plffs. Ex. 18.





Boorman Extension  
 properties  
 in red;  
 scale 200=1"

10/1/03  
 11/1/03

State of Id  
County of :

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[Seal]

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**Plaintiffs' Exhibit No. 20.**

**Mining Deed.**

This Indenture made this September 29th, 1899, by and between Eleanor Truax O'Neil, of the County of Spokane and State of Washington, party of the first part, and the Buffalo Hump Mining Company of the State of Idaho, a corporation doing business in the State of Idaho, party of the second part.

Witnesseth: That for and in consideration of the sum of Five Thousand (\$5000.00) Dollars to her in hand paid by the party of the second part, in gold coin of the United States, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released and forever quitclaimed, and by these presents does grant, bargain, sell, remise, release, and forever quitclaim unto the said party of the second part, its successors and assigns, all the right, title and interest of the party of the first part in and to that certain quartz lode mining claim known as "The O'Neil Lode Mining Claim," as located, surveyed and recorded, and situated in the Lalande Mining District of Shoshone County, State of Idaho, and being her interest in that certain mining claim more fully described in a deed given by one W. J. Tretheway to Charles W. O'Neil, and recorded in the Recorder's office of said Shoshone County, in Book "X" of Deeds at page 613 and the location notice of which was recorded in Book B. of Quartz Locations at pages 336 to 337, in said Recorder's Office, together with all the dips, spurs and angles, and also all the metals, ores, gold and silver-bearing quartz, rock and earth

therein, and all the rights, privileges and franchises thereto incident, appendant and appurtenant or therewith usually had and enjoyed; also all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the rents, issues and profits thereof; and also, all the estate, right title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first, of, in, or to, the said premises; and every part and parcel thereof with the appurtenances.

To Have and to Hold all and singular the said premises, together with the appurtenances and privileges thereto incident, unto said party of the second part, its heirs and assigns forever.

In Testimony Whereof, the said party of the first part, has hereunto set her hand and seal the day and year first above written.

ELEANOR TRUAX O'NEIL [Seal]

By B. D. CROCKER,

Her Atty. in Fact.

Signed, Sealed and Delivered in the presence of:

SAML. R. STERN,

CHAS. P. LUND.

[U. S. I. R. \$5.00 stamp attached.]

State of Washington, }  
County of Spokane. } ss.

I, Samuel R. Stern, a Notary Public in and for the above County and State, do hereby certify that on this September 29th, 1899, before me, personally, appeared

B. D. Crocker, personally known to me to be the same person, whose name is subscribed to the within instrument, as the attorney in fact of Eleanor Truax O'Neil, and said B. D. Crocker duly acknowledged to me that he subscribed the name of the said Eleanor Truax O'Neil thereto, as principal and his own name as attorney in fact; and that he so executed the same by virtue of the power of attorney duly authorizing him to execute the same, given to the said B. D. Crocker by the said Eleanor Truax O'Neil, and that he executed the same in her behalf for the uses and purposes therein mentioned.

Witness my hand and Notarial Seal, the day and year in this certificate first written.

[Seal]

SAML. R. STERN,

Notary Public Residing at Spokane, Washington.

Recorded at the request of F. Lewis Clark, Oct. 21, 1899, at 2 o'clock P. M.

HORACE M. DAVENPORT,

County Recorder.

State of Idaho, }  
County of Shoshone. } ss.

I, Horace M. Davenport, County Recorder in and for said County, do hereby certify that the foregoing copy of Deed has been by me compared with the original and that it is a correct transcript therefrom as the same appears of record in Book "15" of Deeds, on page 29, thereof, at my office and in my custody.

In testimony whereof I hereunto, set my hand and

affix my official seal this 28th day of September, A. D. 1901.

[Seal]

HORACE M. DAVENPORT,  
County Recorder.

B y John P. Sheehy,  
Deputy.

[Endorsed]: (Certified Copy.) "Deed." Eleanor Truax O'Neil, by D. B. Crocker, her Attorney in Fact, to Buffalo Hump Mining Company. Plffs. Ex. 20. E. J. L.

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**Plaintiffs' Exhibit No. 21.**

**Agreement.**

Know all men by these presents: That I, Eleanor Truax O'Neil, of Spokane, Washington, By B. D. Crocker, my attorney in fact; have this day; for a valuable consideration, the receipt of which is hereby acknowledged, given to the Standard Mining Company an option to purchase all my right, title and interest in and to the following claims, situated in Lalande Mining District, Shoshone County, State of Idaho, to wit: The Mammoth, Tariff, Saturday Fraction, Walter Mackay, Grey Copper, Grey Copper Fraction, Selkirk and portions of Sancho and Snow Line claims respectively, such option being evidenced by a written agreement in escrow at the Exchange National Bank of Spokane Falls, a national banking corporation, doing business at Spokane, Washington, and that upon a compliance with the terms of said escrow, the said Standard Mining Company is entitled to a deed to the property hereinbefore referred to.



I further certify herewith that I have for a valuable consideration, the receipt whereof is hereby acknowledged, also given an option to A. B. Campbell, of Spokane, Washington as trustee, to purchase all my right, title and interest in and to the claims situated in the same mining district known as the Ore-or-no-go and O'Neil lode mining claims, the payment therefor being provided for in the same option given with respect to the claims hereinbefore mentioned and upon a compliance with the terms of said escrow, I have agreed to, and will deed all of the above-entitled properties to the said Standard Mining Company and said A. B. Campbell, as trustee, respectively.

In Witness Whereof, I have set my hand and seal by B. D. Crocker, my attorney at fact, this 20th day of April, 1899.

ELEANOR TRUAX O'NEIL,

By B. D. CROCKER,  
Her Attorney in Fact.

Witness:

SAML. R. STERN.

RUBY R. MARBLE.

State of Washington, }  
County of Spokane. } ss.

On this 21st day of April, A. D. 1899, before me Samuel R. Stern, a Notary Public in and for said County and State, personally appeared B. D. Crocker, personally known to me to be the same person whose name is subscribed to the within instrument as the attorney in fact of Eleanor Truax O'Neil, and said B. D. Crocker duly

acknowledged to me that he subscribed the name of the said Eleanor Truax O'Neil thereto as principal and his own name as attorney in fact, and that he subscribed to the within instrument and acknowledged that he executed the same as the act and deed of the said Eleanor Truax O'Neil and as her attorney in fact, and for the uses and purposes therein mentioned.

In Testimony Whereof, I have hereunto set my hand and official seal the day and year in this certificate first above written.

[Seal]

SAM'L. R. STERN,

Notary Public Residing at Spokane, Washington.

[U. S. I. R. Stamp 10 cts. attached.]

Recorded at the request of H. R. Allen, May 17, 1899,  
at 2 o'clock P. M.

HORACE M. DAVENPORT,

County Recorder.

By Chas. W. Betts,

Deputy.

State of Idaho,

County of Shoshone.

} ss.

I, Horace M. Davenport, County Recorder in and for said County, do hereby certify that the foregoing copy of Agreement has been by me compared with the original and that it is a correct transcript therefrom as the same appears of record in Book "D" of Bonds and Agreements, on page 384 thereof, at my office and in my custody.

In testimony whereof, I hereunto set my hand and

affix my official seal this 28th day of September A. D. 1901.

[Seal]

HORACE M. DAVENPORT,  
County Recorder.  
By John P. Sheehy,  
Deputy.

[Endorsed]: (Certified Copy.) Of Agreement Between Eleanor Truax O'Neil, by her Attorney in Fact B. D. Crocker, and The Standard Mining Company and A. B. Campbell. Plffs. Exhibit 21. E. J. L.

-----  
**Plaintiffs' Exhibit No. 22.**

Abstract of Certificates issued to the Ella Mining Co. for ore shipped by them and sampled by the North Western Sampling and Milling Co., Wallace, Idaho.

Lot No. 1, Jan. 5th, 1895.

Gross Wt.	Net Wt.	Pb.	Ag.
-----------	---------	-----	-----

80.230	79.430	66.3	36.4..47395.78 lbs.
--------	--------	------	---------------------

Lead at \$3.00 equals 1,421.78. 1373.345 oz. ag.

59 $\frac{3}{4}$  equals, 820.57, total..... 2242.44

Lot No. 2, Jan. 12th, 1895.

Gross Wt.	Net Wt.	Pb.	Ag.
-----------	---------	-----	-----

101.260	100.250	66.2	37.7..59728.95 lbs.
---------	---------	------	---------------------

Lead at \$3.00 equals 1791.86. 1795.227 oz. ag. at

59 $\frac{3}{4}$  equals 1072.64. Total..... 2864.50

Lot No. 3, Jan. 18th, 1895.

Gross Wt.	Net Wt.	Pb.	Ag.
-----------	---------	-----	-----

90740.	89.830	66.8	38.9..54005.8 lbs.
--------	--------	------	--------------------

Lead at \$3.02 equals 1633.67. 1659.834 oz. ag.

at 59 $\frac{3}{4}$  equals 991.75. Total..... 2625.42

Lot No. 4, Feb. 9th, 1895.

Gross Wt. Net Wt. Pb. Ag.

82.260 82.100 66.0 35.0 . . 48.767.40 lbs.

Lead at \$3.02½ equals 1475.21. 1.364.913 oz. ag.

at 59½ equals \$12.12. Total..... 2287.33

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10019.69

Less Freight and Treatment on 354.490 lbs.

equals 177.490 Tons at \$25.00 per ton..... 4431.12

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5588.57

April, 1895, shipped to Helena (2 cars) 40 tons

est..... 1484.80

Sept., 1895, shipped to Tacoma, 65.1109, value. 2790.34

Royalty from Lease to Poorman, as per state-

ment.....6661.07

---

Total.....16524.78

Total Shipments 283 Tons.

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Plaintiffs' Exhibit No. 23.

The Coeur D'Alene S. L. Co., in Account with The Ella Mining Co.

1895.		DR.	
Feb.	15th.	To Ore Bought	1026.44
Mch.	15th.	"	1824.35
Apl.	15th.	"	1087.22
May	15th.	"	87.25
June	15th.	"	600.19

July	15th.	”	442.87
August	15th.	”	484.50
Sept.	13th.	”	983.75
Oct.	12th.	”	124.50
			<hr/>
			6661.07

1895. CREDIT.

Feb.	15th.	By Check on Hoge, B. & Co.	1026.44
Mch.	15th.	”	1824.35
April	15th.	”	1087.22
May	15th.	”	87.25
June	15th.	”	600.19
July	15th.	”	442.87
Aug.	15th.	”	484.50
Sept.	13th.	”	983.75
Oct.	15th.	”	124.50
			<hr/>
			6661.07

**Plaintiffs' Exhibit No. 24.**

**Escrow Memorandum.**

This deed deposited herewith in the custody of the Exchange National Bank of Spokane, as the custodian designated by the party hereto, viz: David Holzman of Spokane, Washington, and Patrick Clark of the same place is a conveyance of the undivided one-third of that certain lode mining claim known as the "O'Neil" lying in Lalande Mining District, Shoshone County, Idaho, as

described in the patent issued therefore by the United States to the owners thereof.

This conveyance will be delivered to the grantors named therein on the following conditions:

The said Clark, in consideration of these presents, agrees to pay said Holzman the sum of Five thousand (\$5,000.00) Dollars within three days after this date, after which he is authorized to enter into and work said mining ground and not before. If the said Clark shall make said payment as aforesaid and shall within five months from February the 28th, 1895, deposit to the credit of said grantor for said deed the further sum of Twenty-five Hundred Dollars (\$2500.00) making Seven thousand five hundred dollars (7500.00) in all, then the said custodian is directed to deliver said conveyance to said Clark to take effect from its date.

If said Clark shall fail to make the second payment of Twenty-five hundred dollars (\$2500.00) at the time and in the manner aforesaid, then said custodian shall re-deliver said conveyance to the grantor, Holzman, on demand, and the same shall be void, and in case of such failure all moneys paid by said Clark shall be retained by said Holzman as agreed and liquidated damages and to compensate him for entering into this agreement.

Dated this 25th day of February, 1895.

PATRICK CLARK.

DAVID HOLZMAN.

Witness:

J. A. FINCH.



Filed for record at the request of Patrick Clark,  
March 1st, A. D. 1895, at 5 o'clock P. M.

BARRY N. HILLARD,  
County Recorder.  
By Chas. A. Ervin,  
Deputy.

State of Idaho, }  
County of Shoshone. } ss.

I, Horace M. Davenport, County Recorder in and for said County, do hereby certify that the foregoing copy of Escrow Memorandum has been by me compared with the original and that it is a correct transcript therefrom as the same appears of record in Book "C" of Bonds and Agreements, on page 611 thereof, at my office and in my custody.

In testimony whereof, I hereunto set my hand and affix my official seal this 17th day of October, A. D. 1901.

[Seal]

HORACE M. DAVENPORT,  
County Recorder.  
By John P. Sheehy,  
Deputy.

[Endorsed]: (Certified Copy.) Escrow Memorandum between Patrick Clark and David Holzman, for a  $\frac{1}{3}$  interest in the O'Neil lode, Lalande District, Shoshone County, Idaho. Plffs. Ex. 24. C. H. S.

**Plaintiffs' Exhibit No. 25.****Mining Deed.**

This indenture made the twenty-fifth day of March, A. D. 1895, between David Holzman of the city of Spokane in Spokane County, State of Washington, the party of the first part and Patrick Clark of the City of Spokane in the State of Washington, the party of the second part, Witnesseth: That the said party of the first part for and in consideration of the sum of Twenty-five hundred (\$2500) Dollars lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and other valuable consideration has granted, bargained, sold, remised, released and forever quitclaimed and by these presents does grant, bargain, sell, remise and forever quitclaim unto said party of the second part, and to his heirs and assigns. An undivided one-third interest in and to the O'Neil lode mining claim, situated in Lalande Mining District, Shoshone County, State of Idaho, being the same mining claim designated as Lot number 50 and conveyed by the United States of America to J. N. Russell, Charles W. O'Neil and John P. O'Neil by deed dated the Seventeenth day of May, A. D. 1894, and recorded on page 429 et seq. of Book 6 of Deeds in the Recorder's Office of said Shoshone County on the 22d day of June, A. D. 1894, to the description of the mining claim in which reference is hereby made as a part of this instrument.

Together with all the dips, spurs and angles and also

all the metals, ores, gold and silver-bearing quartz, rock and earth therein, and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever as well in law as in equity of the said party of the first part of, in or to the said premises, and every part and parcel thereof, with the appurtenances.

To have and to hold, all and singular, the said premises, together with the appurtenances and privileges thereto incident unto the said party of the second part, his heirs and assigns forever.

In Witness Whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

DAVID HOLZMAN. [Seal]

Signed, Sealed and Delivered in presence of:

A. G. AVERY.

State of Washington, }  
County of Spokane. } ss.

On this 25th day of March, A. D. 1895, before me, A. G. Avery, a Notary Public in and for said County, personally appeared David Holzman, personally known by me to be the person whose name is subscribed to the within instrument and acknowledged to me that he exe-

cuted the same freely and voluntarily for the uses and purposes herein set forth.

In Witness Whereof I have hereunto set my hand and affixed my official seal at my office in Spokane the day and year in this certificate first above written.

[Seal]

A. G. AVERY,

Notary Public, Residing at Spokane, Washington.

Recorded at the request of Patrick Clark, Mar. 1895, at 4 o'clock P. M.

BARRY N. HILLARD,

County Recorder.

By Chas. A. Ervin,

Deputy.

State of Idaho,

County of Shoshone.

} ss.

I, Horace M. Davenport, County Recorder in and for said County, do hereby certify that the foregoing copy of Deed has been by me compared with the original and that it is a correct transcript therefrom as the same appears of record in Book "9" of Deeds, on page 166 thereof, at my office and in my custody.

In testimony whereof, I hereunto set my hand and affix my official seal this 17th day of October, A. D. 1901.

[Seal]

HORACE M. DAVENPORT,

County Recorder.

John P. Sheehy,

Deputy.

[Endorsed]: Certified Copy. Deed from David Holtzman to Patrick Clark, for  $\frac{1}{3}$  interest in the O'Neil lode, Lalande Mining District, Shoshone County, State of Ida. Plffs. Ex. 25, C. H. S.

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**Plaintiffs' Exhibit No. 26.**

**Mining Deed.**

This Indenture made this 26th day of March in the year of our Lord One thousand eight hundred and ninety-five, between Patrick Clark of Spokane, Washington, party of the first part and the Coeur d'Alene Silver-Lead Mining Company, a Corporation organized under the laws of the State of Montana, the party of the second part, Witnesseth: That the said party of the first part, for and in consideration of the sum of One (1) Dollars, lawful money of the United States of America, to him in hand paid the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released, conveyed and quitclaimed, and by these presents does grant, bargain, sell, remise, release, convey and quitclaim unto the said party of the second part and to its successors and assigns forever, all the right, title and interest, estate, claim and demands, of said party of the first part, of, in and to that certain portion, claim and mining right, title and property on that certain ledge, vein, lode, or deposit of quartz and other rock in place, containing precious metals of gold, silver and other metals, and situated in the Lalande Mining Dis

trict, County of Shoshone and State of Idaho, and described as follows, to wit: An undivided  $\frac{1}{3}$  (one-third) interest in and to the O'Neil lode mining claim, being the same mining claim designated as lot No. 50 and conveyed by the United States of America to J. N. Russell et al., on the 17th day of May, 1894, and recorded on page 429 et seq., of Book 6 of Deeds in the Recorder's Office of Shoshone County on June 22d, 1894, and being the same property conveyed to this grantor by David Holzman on the 25th day of March, 1895.

Together with all the dips, spurs and angles, and also all the metals, ores, gold, silver and metal-bearing quartz rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant or therewith usually had and enjoyed; and also all the estate, right, title, interest, possession, claim and demand whatsoever of the said party of the first part, of, in or to the premises and every part and parcel thereof.

To have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part.

In Witness Whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

PATRICK CLARK. [Seal]

Signed, Sealed and Delivered in the presence of:

S. P. DOMER.

F. E. LUCAS.



State of Washington, }  
County of Spokane. } ss.

This is to certify that on this 20th day of July, A. D. 1895, before me, S. P. Domer, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally came Patrick Clark, to me known to be the individual described in and who executed the within instrument, and acknowledged to me that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

And the said ———— wife of said ———— upon an examination by me, separate and apart from her said husband, when the contents of said instrument were by me fully made known unto her, and she was by me fully appraised of her rights and the effect of signing the within instrument, did freely and voluntarily, separate and apart from her said husband, acknowledge the same, acknowledging that she did voluntarily, of her own free will, and without fear of or coercion from her husband, execute the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal the day and year in this certificate first above written.

[Seal]

S. P. DOMER,

Notary Public, in and for the State of Washington, Residing at Spokane, Wash.

State of Idaho,                    }  
 County of Shoshone } ss.

I hereby certify that the within instrument was filed for record in the office of the Recorder of Shoshone County, Idaho, at the request of Patrick Clark on the 22d day of July, A. D. 1895, at 30 min. past 2 o'clock P. M.

BARRY N. HILLARD,  
 County Recorder.  
 By Chas. A. Ervin,  
 Deputy.

State of Idaho.                    }  
 County of Shoshone. } ss.

I, Horace M. Davenport, County Recorder in and for said County, do hereby certify that the foregoing copy of Deed has been by me compared with the original and that it is a correct transcript therefrom as the same appears of record in Book "9" of Deeds, on page 342 thereof, at my office and in my custody.

In testimony whereof, I hereunto set my hand and affix my official seal this 17th day of October, A. D. 1901.

[Seal]                               HORACE M. DAVENPORT,  
   County Recorder.  
 By John P. Sheehy,  
   Deputy.

[Endorsed]: Certified Copy. Deed from Patrick Clark, to Coeur d'Alene Silver-Lead Mining Company, a Cor.

poration. Conveying  $\frac{1}{3}$  interest in the "O'Neil" lode Lalande Mining District, Shoshone County, Ida. Plffs. Ex. 26. C. H. S.

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### Plaintiffs' Exhibit No. 27.

#### Power of Attorney.

Know all men by these presents: That I, Eleanor Truax O'Neil of Spokane County, in the State of Washington, have made, constituted and appointed, and by these presents do make, constitute and appoint B. D. Crocker of the County of Walla Walla, in the State of Washington, my true and lawful attorney in fact, for me and in my name, place and stead, and for my use and benefit:

First: To ask, demand, sue for, recover, collect and receive all such sums of money, debts, dues, accounts, legacies, bequests, interests, dividends, annuities and demands whatsoever as are now or shall hereafter become due owing, payable, or belonging to me, and have, use, and take all lawful ways and means in my name or otherwise, for the recovery thereof, by attachments, arrests, distress, or otherwise, and to compromise and agree for the same, and acquittances, or other sufficient discharges for the same for me, and in my name, to make, seal and deliver:

Second: Also, to bargain, contract, agree for, purchase, receive and take lands, tenements, hereditaments, and accept the seisin and possession of all lands, and all deeds and other assurances in the law therefor, and to lease, demise, bargain, sell, remise, release, convey,

mortgage and hypothecate lands, tenements, and hereditaments, upon such terms and conditions and under such covenants as he shall think fit, and for me and in my name, place and stead and as my act and deed to sign, seal, execute, deliver and acknowledge such deeds, leases and assignments of leases, covenants, indentures, agreements, mortgages, hypothecations, bills, bonds, notes, receipts, evidences of debt, releases and satisfactions of mortgages, judgments, and other debts and such other instruments in writing of whatsoever kind and nature as may be necessary or proper in the premises:

Third: Also, to bargain, and agree for, buy, sell, mortgage, hypothecate and in any and every way and manner deal in and with goods, wares and merchandise, choses in action and other property in possession or in action, and to make, do and transact all and every kind of business of what nature and kind soever, and also for me and in my name and as my act and deed, to sign, seal, execute, deliver and acknowledge such covenants, agreements, mortgages, hypothecations, bottomries, charter parties, bills of lading, bills, bonds, notes, receipts, evidences of debt, releases and satisfactions of mortgages, judgments and other debts, and such other instruments in writing of whatever kind and nature as may be necessary or proper in the premises, and especially to manage and control all my business connected with mines and mining interests in the State of Idaho and elsewhere.

That I give unto my said attorney full power to do everything whatsoever requisite and necessary to be done in the premises, as fully as I could if personally

present with power of substitution and revocation hereby ratifying and confirming all that my said attorney shall lawfully do, or cause to be done, by virtue hereof.

In Witness Whereof, I have hereunto set my hand and seal this the 1st day of August, A. D. 1898.

ELEANOR TRUAX O'NEIL. [Seal]

Signed, sealed, and delivered in the presence of:

SARAH E. TRUAX.

N. BUCK.

[U. S. I. R. stamp 25 cents attached.]

State of Washington, }  
County of Spokane. } ss.

I, Warren W. Tolman, a Notary Public, in and for said County and State, do hereby certify that on this 1st day of August, A. D. 1898, personally appeared before me Eleanor Truax O'Neil to me known to be the individual described in and who executed the within instrument and acknowledged that she signed and sealed the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and official seal this 1st day of August, A. D. 1898.

[Seal]

WARREN W. TOLMAN,

Notary Public, Residing at Spokane, Wash.

State of Idaho, }  
County of Shoshone. } ss.

I hereby certify that the within instrument was filed for record and recorded in the office of the County Re

order of said County on the 4th day of August, A. D. 1898, at 9 o'clock, A. M., at the request of B. D. Crocker.

BARRY N. HILLARD,

County Recorder.

By John P. Sheehy,

Deputy.

State of Idaho, }  
County of Shoshone. } ss

I, Horace M. Davenport, County Recorder in and for said County, do hereby certify that the foregoing copy of Power of Attorney has been by me compared with the original and that it is a correct transcript therefrom as the same appears of record in Book "D" of Powers of Attorney, on page 275 thereof, at my office and in my custody.

In testimony whereof, I hereunto set my hand and affix my official seal this 4th day of October, A. D. 1901.

[Seal]

HORACE M. DAVENPORT,

County Recorder.

[Endorsed]: Certified Copy. Power of Attorney, Eleanor Truax O'Neil to B. D. Crocker. Dated, August 1st, 1898. Plffs. Ex. 27. C. H. S.

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**Plaintiffs' Exhibit No. 28.**

Spokane, Wash., Oct. 20, 1899. No. 4665.

**FORSTER & WAKEFIELD.**

Pay to the order of P. Clark, \$7,000.00, Seven thousand Dollars.



To Exchange National Bank, Spokane, Wash.

FORSTER & WAKEFIELD.

[Two Cents U. S. Int. Rev. Stamp. Canceled.]

[Endorsed]: Patrick Clark, P. Clark. Traders' National Bank, Spokane, Wash. Oct. 21, 1899. Paid through Clearing House.

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Plaintiffs' Exhibit No. 29.

Agreement.

Burke, Idaho, Jan. 26th, 1900.

This Agreement made and entered into on this 26th day of January, 1900, between John P. O'Neil, of Shoshone County, State of Idaho; party of the first part, and the Buffalo Hump Mining Company, a corporation organized under the laws of the State of New York, party of the second part.

Witnesseth: For consideration of One Hundred (\$100.00) Dollars to the party of the first part in hand paid by the party of the second party, the receipt of which is hereby acknowledged, the said party of the first part hereby covenants and agrees to sell and convey to the party of the second part the following described lodes and mining claims, to wit:

The undivided third interest of, in and to the O'Neil lode and mining claim, being on the Tiger and Poorman lode, and being an easterly extension of the Ella Fraction lode; the Mono Fraction lode and mining claim, the said Mono Fraction being the easterly extension of the

O'Neil claim; the Russell lode and mining claim, being the easterly extension of the said Mono Fraction claim; the Shoefly No. 2 lode and mining claim, the said Shoefly No. 2 being a claim, lying north and adjoining the Tiger & Poorman mining claims, all of said properties being situated in Lalande Mining District, Shoshone County, Idaho, upon the following terms and conditions, to wit: The entire price for the O'Neil lode and mining claim being Ten Thousand (\$10,000) Dollars, of which \$100.00 has been paid, leaving \$9900.00 to be paid, the sum of \$3900.00 to be paid under this agreement on or before the first of Feb., 1900. The remaining \$6000.00 to be paid on or before the first of August, 1900. For the Mono Fraction lode and mining claim Four Thousand (\$4000.00) Dollars to be paid, of which the sum of \$1600.00 is to be paid on or before the first of Feb., 1900, and the balance of \$2400.00 to be paid on or before the first of August, 1900. For the Russell lode and mining claim Four Thousand (\$4000.00) Dollars, of which \$1600.00 is to be paid on or before the first of Feb., 1900, and the balance of \$2400.00 to be paid on or before the first day of August, 1900. And for the Shoefly No. 2 lode and mining claim Two Thousand (\$2000.00) Dollars, of which \$800.00 is to be paid on or before the First of Feb., 1900, and the balance of \$1200.00 is to be paid on or before the first of August, 1900. And as security for the performance of this contract upon the part of the party of the first part he agrees to deposit separate deeds for each of the above described properties as an escrow in the First National Bank of Wallace, Idaho,

conditioned as above stated, that at the date of his depositing such deed as an escrow in such bank the first payment, as above stated, is to be paid by the party of the second part to the credit of the party of the first part. It being understood and agreed between the parties hereto that the title to the Mono Fraction the Russell and the Shoefly No. 2 lodes and mining claims is not at this time fully vested in the said party of the first part, and the said party of the first part hereby covenants and agrees that prior to the first day of August, 1900, he will secure title to each of the above mentioned mining claims, so that the same will be perfected and enable him to make a good and sufficient conveyance, vesting title in the said party of the second part, or its successors, in each of the respective three mining claims. In case he the said party of the first part, should fail to perfect title in himself so as to be able, on the first of August, 1900, make a good and sufficient conveyance; and clear of all clouds and incumbrances, in either of the three respective mining claims, the party of the second part shall be entitled to deduct from the purchase price herein agreed upon such proportion of such purchase price as will be ratable according to the purchase price hereinbefore stated for said properties, or either of them, and that he, the said party of the first part, will accept such proportion of said purchase price as his interest in each of said respective claims shall then appear on record, and will at that time upon the payment of the proportion then appearing to be vested in him, deliver deeds for his interest in the said three

mining claims, or either of them, of which the party of the second part shall elect to consummate the purchase of his said interests.

In case the party of the second part shall fail to make said final payments, the first payment made upon the said properties shall be forfeited to the party of the first part, and he hereby agrees to accept the same in full as liquidated damages.

Shall this agreement be kept by parties of the second part, then deeds for the respective properties, or either of them, shall be delivered by the bank for the respective claims, or either of them, according to the terms of this agreement. The party of the first part binds himself in this agreement, his heirs, executors, administrators, and assigns.

In witness whereof; the party of the first part has hereunto set his hand and seal the day and year first above written.

JOHN P. O'NEIL. [Seal.]

Signed, Sealed and Delivered in presence of:

W. W. WOODS.

R. H. KINGSBURY.

Jan'y. 27, 1900.

Received of F. R. Culbertson for the Buffalo Hump Mining Company Four Hundred Dollars to apply upon the purchase price of the O'Neil lode & mining claim as specified in the above agreement. If the balance of payment is not made on said premises on or before February 1st, 1900, the said sum and previous payment of \$100.00 is to be forfeited to me.

JOHN P. O'NEIL.

State of Idaho, }  
County of Shoshone. } ss.

On this 27th day of Jan'y, A. D. 1900, before me M. J. Flohr, a Notary Public in and for the said County personally appeared John P. O'Neil, personally known to me to be the same person described in and whose name is subscribed to the within instrument and who executed the same, and acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and affixed my official seal at my office in Wallace, the day and year in this certificate first above written.

[Seal]

M. J. FLOHR,  
Notary Public.

[U. S. I. R. 10c. stamp attached.]

Recorded at the request of W. W. Woods, Jan. 27, 1900, at 4 o'clock P. M.

HORACE M. DAVENPORT,  
County Recorder.

State of Idaho, }  
County of Shoshone. } ss.

I, Horace M. Davenport, County Recorder in and for said County, do hereby certify that the foregoing copy of Agreement has been by me compared with the original and that it is a correct transcript therefrom as the same appears of record in Book "D" of Bonds and Agreements, on page 534 thereof, at my office and in my custody.

In testimony whereof, I hereunto set my hand and affix my official seal this 11th day of October, A. D. 1901.

[Seal]

HORACE M. DAVENPORT,

County Recorder.

By John P. Sheehy,

Deputy.

[Endorsed]: (Certified Copy.) Of Agreement of John P. O'Neil, with Buffalo Hump Mining Company. Pliffs' Exhibit 29. E. J. L.

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**Plaintiffs' Exhibit No. 30.**

**Mining Deed.**

This indenture, made the first day of August, A. D. 1900, between John P. O'Neil of the town of Burke, County of Shoshone, State of Idaho, the party of the first part, and Buffalo Hump Mining Company, a corporation organized and existing under and by virtue of the laws of the State of New York the party of the second part Witnesseth: That the said party of the first part, for and in consideration of the sum of Fourteen thousand eight hundred thirty-three and 33-100 (\$14,833.-33) Dollars, lawful money of the United States of America, to him in hand paid by said party of the second part, the receipt whereof is hereby acknowledged, has Granted, Bargained, Sold, Remised, Released and forever Quit-claimed, and by these presents does Grant, Bargain, Sell, Remise, Release and forever Quit-claim unto said party of the second part, and to its successors and assigns, all of his (the said party of the first part)



right, title and interest of, in and to the following lode mining claims, situated and located in Lalande Mining District, County of Shoshone, State of Idaho, and more particularly described as follows, to wit: The "O'Neil" lode mining claim the patent for which from the United States is recorded in the office of the Recorder of the said County of Shoshone, State of Idaho, in Book "6" of Deeds at page 429, to which patent and the record thereof reference is hereby had and made for a more particular description of said "O'Neil" lode mining claim:

Also the "Shoe-fly" lode mining claim, the notice of location of which is recorded in the office of the Recorder of the County of Shoshone, State of Idaho, in Book "C" of Quartz Locations at page 69, to which said notice and the record thereof reference is hereby had and made for a more particular description of said "Shoe-fly" lode mining claim:

Also the "Shoo Fly No. 2" lode mining claim, the notice of location of which is recorded in the office of the Recorder of the County of Shoshone, State of Idaho, in Book "E" of Quartz Locations, at page 581, to which notice and the record thereof reference is hereby had and made for a more particular description of said "Shoo Fly No. 2" lode mining claim:

Also the "Mono Fraction" lode mining claim the notice of location of which is recorded in the office of the Recorder of the County of Shoshone, State of Idaho, in Book "O" of Quartz Locations, at page 229, to which notice and the record thereof reference is hereby had and

made for a more particular description of said "Mone Fraction" lode mining claim:

And also the "Russell" lode mining claim, the notice of location of which is recorded in the office of the Recorder of the County of Shoshone, State of Idaho, in Book "B" of Quartz Locations at page 338, to which notice and the record thereof reference is hereby had and made for a more particular description of said "Russell" lode mining claim.

Together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver-bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also, all and singular the tenements, hereditaments, appurtenances thereto belonging or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances.

To have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, its successors and assigns, forever.

In witness whereof, the said party of the first part has

hereunto set his hand and seal, the day and year first above written.

JOHN P. O'NEIL. [Seal.]

Signed, Sealed and Delivered in Presence of:

C. W. BEALE.

Revenue stamp to the amount of \$15.00 on this instrument and canceled.

State of Idaho,                    }  
County of Shoshone.            } ss.

On this 1st day of August, A. D. 1900, before me, H. M. Davenport, a Notary Public in and for said County of Shoshone, State of Idaho, personally appeared John P. O'Neil, personally known to me to be the person whose name is subscribed to the within and above instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my notarial seal, the day and year in this certificate first above written.

[Seal]

H. M. DAVENPORT,  
Notary Public.

Recorded at the request of F. R. Culbertson, August 1st, 1900, at 5 o'clock P. M., in Book 17 of Deeds, page 40, Records of Shoshone County, State of Idaho.

HORACE M. DAVENPORT,  
County Recorder.

State of Idaho,                    }  
County of Shoshone.            } ss.

I, Horace M. Davenport, County Recorder in and for

said County, do hereby certify that the foregoing copy of Deed has been by me compared with the original, and that it is a correct transcript therefrom as the same appears of record in Book "17" of Deeds, on page 40 thereof, at my office and in my custody.

In testimony whereof, I hereunto set my hand and affix my official seal, this 17th day of October, A. D. 1901.

[Seal]

HORACE M. DAVENPORT,

County Recorder.

By John P. Sheehy,

Deputy.

[Endorsed]: Certified copy deed from John P. O'Neil to Buffalo Hump Mining Company.  $\frac{1}{3}$  interest in the "O'Neil" lode, Lalande Mining District, Shoshone County, Idaho, together with other property. Plffs. Exhibit 30. E. J. L.

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**Plaintiffs' Exhibit No. 31.**

CHARLES M. FASSETT,

Assay Office and Ore Testing Works.

Member American Chemical Society.

Member American Institute Mining Engineers.

Cable Address Cemfast, Postal Code.

Practical Working Tests  
Of Ores by any Process.

Wilfley Table.

Spokane, Washington, Sept, 24, 1901.

Memorandum of Assay of Ore Made for P. Clark by Jas.  
Harvey.

Assay Value Per Ton of 2,000 Pounds Advoirdupois.

Sample Mark.

	Lead at . . . . . cts. per lb.	Silver at . . . . . cts. per oz.
	Per cent. Dollars. cts.	Ounces, 10ths.
Ella No. 1 . . . . .	25 3-10	13
Ella No. 2 . . . . .	24 9-10	11.7
Ella No. 3 . . . . .	41 1-10	21.5

No. 29262—4.

Charges, \$4.50.

All samples saved for one year. Pulps can be had from these samples for check assays, at any time.

Taken on Sept. 20th.

C. M. FASSETT.

Plffs. Exhibit 31. E. J. L.

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**Plaintiffs' Exhibit No. 33.**

*In the Circuit Court of the United States for the District of Idaho, Northern Division.*

PATRICK CLARK et al.,	}	Complainants,
vs.		
THE BUFFALO HUMP MINING COMPANY et al.,	}	Defendants.

**Order Permitting Plaintiffs to Enter Premises.**

The plaintiffs having withdrawn their application for an injunction and a receivership, by agreement of parties expressed in open court, it is ordered:

That the plaintiffs and their engineers, with necessary assistants, be allowed to enter into the premises in controversy in this suit through the workings of the defendants, to make an underground survey and examination of the premises in controversy in this suit, and that until this case has been finally tried and decided by this Court, the plaintiffs be allowed access to the premises in controversy through the workings of the defendant companies by a representative to be appointed by the plaintiffs at all reasonable times; such representative to be either one of the plaintiffs or some person unobjectionable to the defendants.

Done in open court, at Boise City, Idaho, this 14th day of September, 1901.

JAS. H. BEATTY,  
Judge.

It is hereby stipulated that the foregoing order may be entered without further presentation by counsel.

STOLL & MacDONALD,  
M. J. GORDON,  
W. W. WOODS,  
Attys. for Plffs.  
W. B. HEYBURN,  
Atty. for Defendants.

[Endorsed]: No. 247. United States Circuit Court, Northern Division, District of Idaho. Patrick Clark et al. vs. Buffalo Hump Mining Co. Order. Filed September 14, 1901. A. L. Richardson, Clerk.



**Plaintiffs' Exhibit No. 34.**

**CERTIFICATE OF INCORPORATION**

We, the undersigned, all being persons of full age, and at least two-thirds being citizens of the United States, and at least one of us a resident of the State of New York, desiring to form a stock corporation, pursuant to the provisions of The Business Corporations law of the State of New York, do hereby make, sign, acknowledge and file this certificate for that purpose, as follows, to wit:

First: The name of the proposed corporation is EMPIRE STATE-IDAHO MINING AND DEVELOPING COMPANY.

Second: The purposes for which said corporation is to be formed are the buying, acquiring, leasing, developing, improving, operating and otherwise dealing in mines and mining properties in any part of the State of New York, and elsewhere in any of the States and Territories of the United States of America, to enter into contracts, under purchases, leases, or otherwise, with any person or corporation relative to such business; to acquire contracts for any of the said purposes, and to sell, pledge, mortgage, sublet or lease to others any mining property or properties so acquired by it as such corporation; to receive or give in payment or contract so to do in whole or in part, for any of the purposes of its said business, the stocks or bonds, promissory notes, obliga-

tions or securities of any character, whether of a corporation or individual, as the case may be; to hold, operate, improve, develop and use for the time being, and with the view of reselling and disposing of same, the mining properties so purchased, acquired, leased or held by it as aforesaid, to issue bonds, debentures or obligations of the Company, from time to time, for any of the objects and purposes of the Company; and secure the same by a mortgage mortgages, deed or deeds of trust, on any or all of the property, rights, franchises and income of the Company, in such manner, and upon such terms as the Stockholders or Board of Directors may deem expedient; to invest in, purchase, acquire, hold and own the stocks and debentures of other corporations with whom, in the carrying on of its said business, the said Company shall have dealings, and generally to do and transact all acts, business and things incident to, or in any way connected with, or necessary to carry out any of the purposes or objects hereinbefore generally expressed.

Third: The amount of the capital stock is seven hundred and fifty thousand dollars.

Fourth: The number of shares of which the capital stock shall consist is 75,000 shares, of the par value of Ten Dollars per share, and the amount of capital with which such corporation will begin business is  
J. J. C. \$375,000.

Fifth: The principal office of said corporation is to be located in the City of New York, Borough of Manhattan, in the County of New York, and State of New York.

Sixth: Its duration is to be fifty years.

Seventh: The number of its directors is to be seven.

Eighth: The names and postoffice addresses of the directors for the first year are as follows:

Names.	Postoffice Addresses.
Edwin Packard,	241 Henry Street, Brooklyn, N. Y.
George Cox, Jr.,	17 William Street, New York.
J. Edward Weld,	160 Broadway, New York.
Herbert W. Grindal,	160 Broadway, New York.
James Dunne,	31 Nassau Street, New York.
William S. Dennatt	S East 49th Street, New York.
Richard M. Hurd,	59 Cedar Street, New York.

Ninth: The names and postoffice addresses of the subscribers, and a statement of the number of shares of stock which each agrees to take in the corporation, are as follows:

Names.	Postoffice Addresses.	No. of Shares.
Edwin Packard,	241 Henry St., Brooklyn, N. Y.	15 shares.
George Cox, Jr.,	17 William Street, New York,	15 shares.
J. Edward Weld,	160 Broadway, New York,	15 shares.
Herbert W. Grindal,	160 Broadway, New York,	15 shares.
J. J. C. James Dunne,	31 Nassau Street, New York,	37,400 shares.
William S. Dennett	S East 49th Street, N. Y.,	15 shares.
Richard M. Hurd,	59 Cedar Street, New York,	15 shares.

In witness whereof, we have severally made, signed, acknowledged and filed this Certificate in duplicate.



[Endorsed]: No. 770. Empire State-Idaho Mining and Developing Company. Certificate of Incorporation.

Tax for privilege of organization of this Corporation \$937.50, under chapter 908, Laws of 1896. Paid State Treasurer before Filing.

State of New York, Office of Secretary of State. Filed and Recorded May 10, 1898.

ANDREW DAVIDSON,  
Deputy Secretary of State.

Filed at the request of W. B. Heyburn, Jun. 27, 1898, at 9 o'clock A. M., Records of Shoshone County, State of Idaho.

BARRY N. HILLARD,  
County Recorder.  
By Chas. A. Ervin,  
Deputy Recorder.

State of Idaho, }  
County of Shoshone. } ss.

I, Horace M. Davenport, County Recorder in and for the County of Shoshone, State of Idaho, hereby certify that the foregoing copy of Certificate of Incorporation has been by me compared with the original, and that it is a full, true and correct transcript therefrom, together with all the indorsements thereon, as the same appears on file in my office and in my custody.

In testimony whereof, I hereunto set my hand and

affix my official seal at my office in Wallace, Idaho, on this 17th day of October, A. D. 1901.

[Seal]

HORACE M. DAVENPORT,

County Recorder.

By John P. Sheehy,

Deputy.

[Endorsed]: Certified Copy of Certificate of Incorporation of the Empire State-Idaho Mining and Developing Company. Plffs. Ex. 34.

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**Plaintiffs' Exhibit No. 35.**

**Mining Deed.**

This Indenture, made the 17th day of January, A. D. 1901, between the Buffalo Hump Mining Company, a corporation organized and existing under the laws of the State of New York, and doing business in Shoshone County, State of Idaho, the party of the first part, and the Empire State-Idaho Mining & Developing Company, a corporation organized and existing under the laws of the State of New York, and doing business in said Shoshone County, State of Idaho, the party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of Two million one hundred thousand dollars, lawful money of the United States of America, to it in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said



party of the second part and to its successors and assigns the following described mining property, to wit:

1. All of that certain quartz lode mining claim, situated in the Lalande Mining District, Shoshone County, State of Idaho, known as and called the "Tiger" lode mining claim, for a more particular description, of which reference is hereby made to the record of the United States Patent therefor, duly recorded on the 23rd day of January, 1895, upon the records of said Shoshone County, in Book 9 of deeds, at page 101 thereof.

2. Also, all of that certain quartz lode mining claim, situated in said Lalande Mining District, Shoshone County, State of Idaho, known as and called the "Poorman" lode mining claim, for a more particular description of which reference is hereby made to the record of the United States patent therefor, duly recorded on the 29th day of April, 1891, upon the records of said Shoshone County, in Book "X" of Deeds, at page 54 thereof.

3. Also all that certain quartz lode mining claim, situated in the Lalande Mining District, Shoshone County, State of Idaho, known as and called the "Wide West" lode mining claim, for a more particular description of which reference is hereby made to the record of the United States patent therefor, duly recorded on the 23rd day of January, 1895, upon the records of said Shoshone County, in Book 9 of Deeds, at page 98 thereof.

4. Also, all of that certain quartz lode mining claim, situated in said Lalande Mining District, Shoshone County, State of Idaho, known as and called the "Sheridan" lode mining claim, for a more particular description of

which reference is hereby made to the record of the United States Patent therefor, duly recorded on the 26th day of August, 1899, upon the records of said Shoshone County, in Book "A" of Patents, at page ——— thereof.

5. Also, all of that certain quartz lode mining claim, situated in said Lalande Mining District, Shoshone County, State of Idaho, known as and called the "O'Neil" lode mining claim, for a more particular description of which reference is hereby made to the record of the United States patent therefor, duly recorded on the 22nd day of June, 1894, upon the records of said Shoshone County, in Book "6" of Deeds, at page 429 thereof.

6. Also, all of its right, title and interest in and to that certain quartz lode mining claim, situated in said Lalande Mining District, Shoshone County, State of Idaho, known as and called the "Ella," and sometimes the "Ella Fraction" lode mining claim, for a more particular description of which reference is hereby made to the records of the United States patent therefor, duly recorded upon the records of said Shoshone County on the 13th day of July, 1893, in Book "4" of Deeds, at page 438 thereof.

7. Also, all of its right, title and interest in and to that certain quartz lode mining claim, situated in said Lalande Mining District, Shoshone County, State of Idaho, known as and called the "Mono Fraction" and sometimes the "Mono" lode mining claim, for a more particular description of which reference is hereby made to the record of the notice of location thereof, duly recorded on

the 31st day of December, 1894, in Book "O" of Quartz Locations, at page 229 thereof.

8. Also, all of that certain quartz lode mining claim, situated in said Lalande Mining District, Shoshone County, State of Idaho, known as and called the "Protection" lode mining claim, for a more particular description of which reference is hereby made to the record of the notice of location thereof, duly recorded upon the records of said Shoshone County, on the 20th day of November, 1899, in Book "P" of Quartz Locations, at page 364 thereof.

9. Also, all of its right, title and interest in and to that certain quartz lode mining claim, situated in said Lalande Mining District, Shoshone County, State of Idaho, known as and called the "Russell" lode mining claim, for a more particular description of which reference is hereby made to the record of the notice of location thereof, duly recorded on the 4th day of February, 1895, upon the records of said Shoshone County, in Book "B" of Quartz Locations, at page 338 thereof.

10. Also, all of its right, title and interest in and to that certain quartz lode mining claim, situated in said Lalande Mining District, Shoshone County, State of Idaho, known as and called the "Shoo Fly No. 2" and sometimes the "Shoo Fly" lode mining claim, for a more particular description of which reference is hereby made to the record of the notice of location thereof, duly recorded on the 21st day of February, 1887, upon the records of said Shoshone County in Book "E" of Quartz Locations, at page 581 thereof.

11. Also, all of that certain quartz lode mining claim, situated in said Lalande Mining District, Shoshone County, State of Idaho, known as and called the "Shoo Fly Fraction" lode mining claim, for more particular description of which reference is hereby made to the record of the notice of location thereof, duly recorded on the 12th day of November, 1900, upon the record of said Shoshone County, in Book "V" of Quartz Locations, at page 319 thereof.

12. Also all of that certain quartz lode mining claim, situated in said Lalande Mining District, Shoshone County, State of Idaho, known as and called the "Sunday" lode mining claim, for a more particular description of which reference is hereby made to the record of the notice of location thereof, duly recorded on the 14th day of May, 1900, upon the records of said Shoshone County, in Book "T" of Quartz Locations, at page 308 thereof.

13. Also, all of that certain quartz lode mining claim, situated in said Lalande Mining District, Shoshone County, State of Idaho, known as and called the "Missing Link" lode mining claim, for a more particular description of which reference is hereby made to the record of the notice of location thereof, duly recorded on the 6th day of December, 1894, upon the records of said Shoshone County, in Book "O" of Quartz Locations, at page 214 thereof.

14. Also, that certain water right, located on Gorge Gulch about one-fourth of a mile from the point where Gorge Gulch empties into Canyon Creek.

15. Also, that certain water right located on the

North side of Canyon Creek, about one-third of a mile above the concentrator and used for wash water in said concentrator.

16. Also, that certain water right located on the left hand side of Canyon Creek, about one-fourth of a mile above the concentrator and carried in a flume to a point opposite said concentrator, said water being used for concentrating purposes.

17. Also, that certain water right located on Canyon Creek, on the left hand side, about  $3\frac{1}{4}$  miles above the town of Burke, Idaho, and conveyed in a flume  $1\frac{3}{4}$  miles long to a point opposite the Electric Power Station, belonging to the grantor herein, said water being used for electric power purposes.

18. Also, that certain water right located on Sawmill Gulch, about one mile above where said Gulch empties into Canyon Creek, said water being conveyed in a flume along the east side of Sawmill Gulch, to a point opposite the Electrical Power Station, and used for electrical power purposes.

19. Also, all its right, title, and interest in those two certain water rights taken out of Circle and Glidden Lakes, the improvements consisting of two dams, about five miles up Canyon Creek on the east side of the same, said lakes being near the summit of the dividing ridge between Canyon Creek and Mullan.

20. Also, that certain mill-site, situate about one and one-third miles above the Town of Burke, known as the electrical power station, together with the buildings, machinery and plant thereon and connected therewith.



21. Also, that certain wooden office building, known as the old Poorman office, situated about one-fourth of a mile above the grantor's concentrator.

22. Also, that certain piece of ground, lying between the overflow of the flume and the building known as the John Stack boarding house between the railroad track and the base of the hill, on which is situated a frame building known as the Ehrenberg house.

23. Also, that certain parcel of land known as the Mike Fagan lot on which is situated the boarding house of the company grantor.

24. Also, that certain lot, piece or parcel of land conveyed to the party of the first part on the 11th day of December, A. D. 1899, by W. C. Chapman, Jr., by deed duly recorded on the 23rd day of February, A. D. 1900, in Book 8 of Deeds, at page 555 thereof, records of said Shoshone County, and described as the first lot above the Buffalo Hump Mining Company's Hotel, and commonly known as the Mattie Jones lot, said lot being fifty by one hundred and fifty feet.

25. Also, all the rights, and privileges belonging to the grantor under and by virtue of a certain contract heretofore entered into between the Consolidated Tiger & Poorman Mining Company, and the Coeur d'Alene Mining & Concentrating Company, for the continuation of a 1,000 foot tunnel through the Hidden Treasure ground, and into the Union Mining claim, said Union Mining claim being the second westerly extension of the Tiger mining claim and the first westerly extension of the Hidden Treasure mining claim.



26. Also, any and all other property, real, personal and mixed, situated in said Lalande Mining District, Shoshone County, and standing upon the records of said Shoshone County, in the name of or belonging to or owned or held by the said party of the first part.

All of said property above described being situated in said Lalande Mining District, Shoshone County, State of Idaho, and for a more particular description of each of which said properties reference is hereby made to the notice of location thereof and also to the deed or deeds conveying the same to the party of the first part and its predecessors in interest, duly recorded upon the records of said Shoshone County.

It is the intention of this instrument to convey to the party of the second part any and all right, title and interest in and to any of said above described properties, to be hereafter acquired by the party of the first part from the Government of the United States, by reason of any and all patent proceedings heretofore instituted in that behalf.

Together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver-bearing quartz, rock and earth therein, and all the rights, privileges and franchises thereto incident, appendant or appurtenant or therewith usually had and enjoyed; and also, all and singular the tenements, hereditaments and appurtenances thereunto belonging, and the rents, issues and profits thereof; and also, all the estate, right, title, interest, possession, claim and demand whatsoever, as well in law as in equity, and as well in possession as in expectancy,

of the said party of the first part, in and to the above granted premises, and every part and parcel thereof.

To have and to hold, all and singular the said above granted premises, with the appurtenances and privileges thereto incident, unto the said party of the second part, its successors and assigns forever.

In Witness Whereof, the said party of the first part, by resolution of its Board of Directors, duly adopted, has hereunto caused its President and Secretary to sign its corporate name and affix its corporate seal the day and year in this indenture first above written.

**BUFFALO HUMP MINING CO.**

By **EDWIN PACKARD,**

President.

[Corporate Seal]      Attest:      **F. J. KILNER,**

Secretary.

[U. S. I. R. \$2,100.00 stamps attached.]

Signed, Sealed and Delivered in the presence of:

**JOHN A. BLOOM.**

**THOS. GANNON.**

State of New York,      }  
County of New York.    } **ss.**

On this 17th day of January, A. D. 1901, before me, John A. Bloom, a Notary Public, in and for said County and State, personally appeared Edwin Packard, known to me to be the President of the Buffalo Hump Mining

Company, the corporation that executed the within instrument and acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]

JOHN A. BLOOM,

Notary Public, Kings Co., Cert. filed N. Y. Co.

[U. S. I. R. 10c stamp attached.]

State of New York,     } ss.  
County of New York. }

I, William Sohmer, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record do hereby certify that John A. Bloom has filed in the Clerk's Office of the County of New York, a certified copy of his appointment as Notary Public for the County of Kings with his autograph signature, and was at the time of taking the proof of acknowledgment of the annexed instrument, duly authorized to take the same. And further that I am well acquainted with the handwriting of such Notary, and verily believe the signature to the said certificate of proof of acknowledgement to be genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 17 day of Jany., 1901.

WM. SOHMER,

Clerk.

[U. S. I. R. 10c. stamp attached.]

Recorded at the request of Empire State-Idaho M. & D. Co., Feb. 12, 1901, at 2 o'clock P. M.

HORACE M. DAVENPORT,  
County Recorder.

By J. A. Lieuallen,  
Deputy.

State of Idaho,                    } ss.  
County of Shoshone.            }

I, Horace M. Davenport, County Recorder in and for said County, do hereby certify that the foregoing copy of Deed has been by me compared with the original, and that it is a correct transcript therefrom as the same appears of record in Book "18" of Deeds, on page 436 thereof, at my office and in my custody.

In testimony whereof, I hereunto set my hand and affix my official seal this 17th day of October, A. D. 1901.

[Seal]

HORACE M. DAVENPORT,  
County Recorder.

By John P. Sheehy,  
Deputy.

[Endorsed]: Certified Copy deed from Buffalo Hump Mining Company, to Empire State-Idaho Mining and Developing Company. Plffs. Ex. 35. C. H. S.

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**Plaintiffs' Exhibit No. 37.**

**Opinion.**

ROSS, Circuit Judge. This was a suit in equity, brought by the appellant, as complainant, to obtain a decree annulling two certain deeds made to the defend-

ants Charles Sweeny and F. Lewis Clark—one by the administrator of the estate of one David McKelvey, deceased, under an order made in a proceeding in mandamus, for an undivided one-third interest in the Skookum mine, situated in Shoshone county, Idaho; and the other by the complainant himself to the defendants Sweeny and Clark for an undivided one-eighth interest in the same mine. The complainant also, by his bill, asked for an accounting of the profits derived by the defendants from working the mine, and also sought an order appointing a receiver to take possession of and operate the property pending the litigation. The claims of the complainant in respect to the two interests rest upon distinct and independent grounds. The one-third interest belonged to David McKelvey during his life. The record before us shows that that interest was first appraised in the proceedings had in respect to the estate of McKelvey at \$3,000, and that the complainant, Hanley, and the defendants Sweeny and Clark all wanted to get it. The Chemung Mining Company is also a factor in the case. That company was incorporated under the laws of the state of Washington by the defendants Clark and Sweeny and one W. E. Goodspeed, who, it appears from the evidence in this case, was a clerk in their office at Spokane; its articles of incorporation bearing date August 5, 1896, and its capital stock being declared to be \$2,500,000, divided into 500,000 shares of the par value of \$5 each. On the 11th day of August, 1896, an agreement in writing was entered into between the complainant, Hanley, as party of the first part, and the de-



fendants Clark and Sweeny, as parties of the second part, and witnessed by W. E. Goodspeed, by which Hanley, in consideration of the sum of \$5,000, paid and to be paid in certain specified amounts and at certain specified times, undertook to sell to Clark and Sweeny an undivided one-fourth interest in those certain mining claims described as follows, to wit: "The Jersey Fraction Mining Claim, the Lily May Mining Claim, the Carriboo Mining Claim, the Good Luck Mining Claim, and the Butte Mining Claim, all situate at Wardner, Yreka mining district, Shoshone county, Idaho, and west of the Last Chance Mining Claim"; the agreement proceeding to provide as follows:

"The party of the first part also agrees that all of the titles to these properties shall be cleaned up by him, and that said properties shall then be deeded to the Chemung Mining Company, of Spokane, Washington, the owners of which shall be as follows: Chas. Sweeny, one-half interest of said company; F. Lewis Clark, one-fourth interest of said company; and Kennedy J. Hanley, one-fourth interest of said company. The parties hereto agree to set aside one-fifth of their holdings of the stock of said company, respectively, to be used for treasury purposes. The money to clean up the title of the said properties, not to exceed the sum of five thousand dollars, to be furnished by the parties of the second part in sums as required under the direction of Chas Sweeny."

The undisputed evidence in the present case is that of the 500,000 shares of the stock of the Chemung Mining Company Hanley owned 100,000 shares, Clark and



Sweeny 300,000 shares, and that 100,000 shares were held as treasury stock of the company. The Skookum was a neighboring mining claim, the interest of the McKelvey estate in which, the evidence leaves no room to doubt, Hanley, Clark, and Sweeny wanted to acquire, and wanted to get for as near nothing as possible. This is shown not only by the testimony of each of them, but by documentary and other evidence that we find in the record, a part of which will be mentioned. The order of the probate court under which the McKelvey interest in the Skookum mine was undertaken to be sold and conveyed by the administrator of the estate is referred to in the brief of appellant's counsel, and in parts of the record, as having been made Decmeber 5, 1896, although the order itself appearing in the record purports to have been made November 30, 1896. Clark and Sweeny were the principal officers of the defendant Empire State-Idaho Mining and Developing Company, of which one W. Clayton Miller was resident manager and consulting engineer. A. G. Kerns was the attorney of the Chemung Mining Company. On the 14th day of December, 1896 (but a few days after the making of the order by the probate court of Shoshone county for the sale of the McKelvey interest in the Skookum mine), Clark wrote to Miller as follows:

"I have tried for three days to get you by telephone, but have failed. After full consultation with Mr. Hanley, it seems to me, if he can buy McKelvey's claim on the Jersey for about the sum net to us, viz., \$400, that he expects to get it for, it better be done now on general

principles, and to get through with it; and if at the same time he can, by paying \$100 or so, obtain an option on one-third of the Skookum at about \$700, so much the better. It does not seem to me, however, that we better put off too long in getting the Jersey interest cleaned up. I should not want to enter into an agreement to buy the Skookum, but would be willing to pay one hundred dollars or so to get an option on the interest. If you and Mr. Hanley think best, however, to postpone the Jersey matter, I shall be satisfied to rest upon your judgment."

Following this letter in the record, but without date, is the following:

"My Dear Kerns: Mr. Clark appears to have changed his mind, and I think now the best you can do is to put Kennedy [Hanley] onto the best and quickest way for him to close for the interest at his bid. He should, at the proper time, put it in as writing. As to Skookum, find out, and let me know; but do nothing now.

"Miller."

Immediately following is this telephone message from Clark to Hanley:

"Mr. Miller telephoned, requesting that you immediately telegraph or telephone Cunningham [who was the administrator of the McKelvey estate] withdrawing your bid on the Jersey tract. By so doing Miller says we can get a reappraisalment to better advantage. Please comply. Just withdraw your bid, and give no reasons. You can telephone me at my house, 255, after 6:30 p. m."

At the time of the making of the order by the probate court of Shoshone county, authorizing the administrator of the McKelvey estate to sell its interest in the Skookum mine, that interest stood appraised at the sum of \$3,000. Hanley had bid therefor the sum of \$700. The statute of Idaho provided that no bid should be accepted which was less than 90 per cent of the appraised value of the property. No other bid appearing to have been made, the McKelvey interest in the Skookum mine was again appraised in February, 1897, and that time at \$760. The administrator of the estate again published and posted notice that he would sell the interest on May 1, 1897, and invited bids therefor. In his return to the probate court of the sale made by him, the administrator, after setting out the notices that he caused to be published and posted, stated:

“That on the 1st day of June, 1897, this administrator received an offer or bid of seven hundred dollars for the undivided one-third interest in the Skookum lode mining, situated in Yreka district, Shoshone county, state of Idaho, from the Chemung Mining Company. That being the only bid filed with me, and that being the highest and only bid for the same, I did on said day sell said real estate to the said Chemung Mining Company, the purchaser thereof, and request that said sale be confirmed; and, further, that the court fix a date and place for a hearing upon said sale.”

This return was made and filed June 15, 1897, but was not verified, as was required by the Idaho statute. On the 18th of June following, an order was made by the

probate court designating June 30, 1897, at 10 o'clock a. m. of that day, at its courtroom in the town of Murray, Shoshone county, as the time and place for the hearing of the return, at which any person interested might appear and file written objections to the confirmation of the sale. That hearing was continued to July 26, 1897, on which day Hanley and the administrator appeared in court, as also W. W. Woods, who had theretofore been the attorney for the administrator in the matter of the estate of McKelvey. Hanley's testimony is to the effect that, after the making of the \$760 appraisal, and after the publication of the notice of sale pursuant to that appraisal, he presented to the administrator a bid of \$700 for the McKelvey interest; but such a bid, if made, does not appear among the files of the estate in the probate court, and has not been produced. As a matter of fact, however, the night before the 26th day of July, 1897, Hanley gave to the administrator \$750, which he said was a raise of \$50 on his bid. The paying of this money in advance of any confirmation of the sale, and before the petition of the administrator for its confirmation to the Chemung Company had come on for hearing, is one of the many peculiar circumstances attending the attempted disposition of the McKelvey interest. Concerning what took place the next day, July 26th, when the matter of the sale came up before the probate court, there is some conflict in the testimony. The bid of the Chemung Mining Company was submitted to the administrator by A. G. Kerns, its attorney, who resided at Wallace, Idaho, and who had an office with Mr.

Woods at that place, and who requested Mr. Woods to attend the confirmation proceedings at Murray, the county seat (to which place he was going), and look after the bid of the Chemung Company. Woods' testimony is to the effect that he went into the office of the probate judge for that purpose in the forenoon of July 26th; that Cunningham, the administrator, and the probate judge, were there; that subsequently Hanley came in; "but," said the witness, "the first inquiry addressed to me was by Mr. Cunningham [the administrator], who stated that there had been a raise of \$50 upon the bid then in. And he and Judge Whalen [the probate judge] wanted my opinion as to what to do in the matter. I inquired as to whether the advance was by the same bidder, and Mr. Cunningham replied that it was the same bidder, and that he had voluntarily raised his bid \$50. I said, 'That is a rather queer proceeding,' and I took down the statutes, and called their attention to the provisions of the statute that, if a bid was not raised to the extent of ten per cent, it would not require a new publication. I said, then, in my opinion there was no objection to the administrator taking \$50 more for the benefit of the estate, if it was the same bidder, and that my advice to the probate judge would be to confirm the bid as made, and not mention that \$50; and my advice to Cunningham as administrator was to take it up on his account, for the benefit of the estate, and confirm the bid which was already in writing. That is all that I remember of that transaction, except they agreed to act upon the advice. The administrator and the probate judge both agreed up-



on that course of conduct." The witness further stated that the administrator requested him to have a deed prepared when he returned to Wallace, and he replied that he would speak to Mr. Kerns about it. As a matter of fact, the probate judge himself, on the same day, to wit, July 26, 1897, prepared an order confirming the sale to the complainant, Hanley, and he testified in this suit that when he was making out that order Hanley, Woods, and the administrator were all present, and that while doing so he asked in the presence of all three of them, "Whom will I make this out to?" and that Hanley replied, "Make it out to me; it is my own money that is paying for it"; and that Woods assented thereto. If that testimony of Hanley is true, Woods could not be a man of honor and integrity, as complainant's counsel here concedes him to be; for he attended the confirmation proceedings at the request of the attorney of the Chemung Company, and for the purpose of having the sale confirmed to it in pursuance of its theretofore accepted bid. Woods' testimony is to the effect that nothing of the kind occurred. The probate judge signed the order confirming the sale to Hanley, and the administrator thereupon executed a deed to him purporting to convey to him the one-third interest of the estate in the Skookum mine. The 26th day of July, 1897, was a day of the regular July term of the probate court of Shoshone county, section 3843 of the Revised Statutes of that state providing that:

"The terms of the probate court in the several counties for the transaction of all probate business, except that



specially authorized by law to be done in vacation, must be held on the fourth Monday in each month. For the transaction of all civil, other than probate business, and all criminal business, these courts are always open."

The next section is as follows:

"The terms of the probate court must be held at the county seats. There shall be a clerk of said court to be appointed by the judge thereof, or the probate judge may act as clerk of his own court. Every probate judge shall be responsible upon his official bond for every default or misconduct in office of his clerk."

On the 12th day of August, 1897, Kerns, who had presented the bid on behalf of the Chemung Mining Company, appeared at the office of the probate judge, and stated to him that a mistake had been made in confirming the sale to Hanley, and that the Chemung Mining Company was the party entitled to the deed; that Hanley's conduct and representations by which he had procured the confirmation and deed to himself were fraudulent. And Kerns presented to the probate judge an order reciting, among other things, that the matter of the confirmation of the sale came on regularly to be heard July 26, 1897, the administrator appearing in person and by his attorney, W. W. Woods, and "Kennedy J. Hanley appearing in person representing himself to appear on behalf of the purchaser at the administrator's sale, and the court having examined the said return and heard the testimony of witness in support thereof," and it duly appearing to the court that in pursuance of the order of sale the administrator caused the proper notice to be

posted and published, and that the sale was made to the Chemung Mining Company, and further reciting "that on the 26th day of July, 1897, an order was made by this court confirming the sale of said real estate and mining premises in one Kennedy J. Hanley, and directing said administrator to execute proper and legal conveyance thereof to said Hanley upon the same bid of \$700; and it appearing to the satisfaction of the court that such order confirming said sale in Kennedy J. Hanley was obtained by misrepresentation and fraud upon the part of said Kennedy J. Hanley in pretending to represent the said Chemung Mining Company,"—proceeded to vacate and annul such order and deed, and to confirm the sale to the Chemung Mining Company, and to direct the administrator to execute a conveyance of the McKelvey interest to that company. The probate judge at first refused to sign the order so requested by Kerns, but subsequently, being urged to do so, and, as he testifies, being threatened by Kerns with a suit if he did not, affixed his signature to the order, without any notice to Hanley, and without any proof of any kind. The order was then left with the probate judge, who, under the provisions of the Idaho statute, acted as clerk of his own court, and who subsequently advised the administrator that the order so signed was void. The administrator, upon demand made on behalf of the Chemung Mining Company, refused to execute a deed to it for the interest of the McKelvey estate in the Skookum mine, and thereupon that company applied to the district court of Shoshone county for a writ of mandamus to compel the adminis-

trator to make the conveyance directed by the order. The district court decided that it was the duty of the administrator to obey the order of August 13, 1897, and the supreme court of the state on appeal affirmed the judgment. *People v. Cunningham* (Idaho) 53 Pac. 451. The administrator having, subsequent to the decision of the district court, deposited a conveyance, as required by the statute of the state, to abide the appeal, that conveyance was, after the decision of the supreme court, delivered to the Chemung Mining Company, and was put on record in the county in which the property is situated; and its title, if any, was thereafter conveyed to the defendant Empire State-Idaho Mining & Developing Company.

In the view we take of the present case, it is not necessary to consider the legal effect of the very peculiar proceedings in the probate court, nor to determine the effect of the decisions of the state courts of Idaho in the cases growing out of them which have been brought to our attention; for we are clearly of the opinion that in respect to the McKelvey interest the complainant is not, by the facts and circumstances of the case, presented in such an attitude as that a court of equity should afford him any relief in respect to that interest. The evidence leaves no room for doubt that the intent of the complainant and of the defendants Clark and Sweeny was to acquire the group of claims of which the Skookum was one, in common ownership, although in different proportions. The three were the sole owners of the stock of the Chemung Mining Company, which company

bid \$700 for the interest of the McKelvey estate in the Skookum mine. Of that bid the administrator, of course, had actual notice, for it was made to him; and in his return to the probate court he expressly stated that under the proceedings had pursuant to the \$760 appraisal of that interest he had sold it to the Chemung Mining Company, and asked the confirmation of the sale to it; and, furthermore, the administrator, in his return, expressly stated that the bid of the Chemung Company was the only bid he had received for that interest. Hanley, like every one else dealing with the administrator in respect to that interest, is certainly chargeable with constructive notice of the matters stated in that return, and we think the circumstances of the case irresistibly lead to the conclusion that he had actual notice of the bid of the Chemung Company, and that the administrator had reported to the court his sale of the interest in question to that company; otherwise, why should he have paid to the administrator \$750 the night before the day the hearing of the administrator's petition for the confirmation of his reported sale to the Chemung Company for \$700 was to be had? Hanley claims to have himself theretofore made to the administrator a bid of \$700 for that interest, which bid, however, nowhere appears among the papers of the estate, nor was it produced in this case; and the administrator, in effect, reported to the court that no such bid had been received by him, for, as has been seen, he expressly stated in his return that the only bid he received for the property was that of the Chemung Mining Com-

pany. If it be true, as claimed by the complainant, that he had in fact bid \$700 for the McKelvey interest under and pursuant to the order of sale of November 30, 1896, and it be further true that Hanley did not, in fact, know of the bid of the Chemung Company, then, and in that event, his voluntary raise of his own bid, in the absence of any other, is "peculiar," to say the least. In that view his action has not been, and cannot be, satisfactorily explained, unless it be based upon some sort of philanthropic motive, which, under the facts and circumstances of the case, we would hardly be justified in attributing to either him or the defendants Clark and Sweeny in their efforts to acquire the McKelvey interest. If, on the other hand, it be true that Hanley did actually know of the bid of the Chemung Mining Company, and it be also true that he himself had also bid \$700 for the same interest, the statements made and assented to by Hanley and the administrator before the probate judge in the presence of Woods, when the matter of the confirmation of the sale came on for hearing on the 26th of July, 1897, cannot be explained consistently with good faith and fair dealing either on the part of Hanley or the administrator. The counsel for the appellant here concedes that Woods, who had been requested by Kerns to look after the confirmation of the sale to the Chemung Company, in pursuance of its accepted bid, did not know of any bid of Hanley, or any other party than the Chemung Company. Therefore, when told by the administrator, in the presence of Hanley and the judge, that the bid had been raised, and



when in response to his question, "By whom?" he was informed that it was by the "original bidder," he very naturally said such a proceeding was "queer." Being there in the interest of the Chemung Company, if either Hanley or the administrator had said that the \$50 raise was by Hanley, Woods would have, at least, had the opportunity of seeing that the sale made to the Chemung Company pursuant to its bid, and reported by the administrator for confirmation, was not, as in fact it purported to be, confirmed to Hanley for the similar sum of \$700. This manifest deception of the representative of the Chemung Company, coupled with the facts that the administrator had theretofore accepted the bid of that company, and so reported to the court, expressly stating at the same time that there was no other bid, and no other bid being in fact produced, supplemented by the extraordinary payment by Hanley to the administrator of the \$750 the night before the day set for the hearing of the administrator's petition for the confirmation of his previously reported sale to the Chemung Company for \$700, and the withholding of notice of such payment from the court as well as that company when the accepted bid of the company came up for consideration, discloses such deceit and fraudulent practices as preclude any and every person in any manner engaged in them from the aid of any court of equity.

But all of the fraud in the case was by no means committed by the complainant. The one-eighth interest in the Skookum mine here involved was confessedly the property of Hanley. So were 100,000 shares of the



stock of the Chemung Mining Company. In respect to that interest the court below held that Hanley dealt with the defendants Clark and Sweeny at arm's length. There is not the slightest doubt that the letters, from Hanley to O'Neil, introduced in evidence, and written a few weeks before the making of the contract of April 30, 1898, show that there was an absolute want of confidence on his part in either Clark or Sweeny, so that the court below was quite right in saying that any pretense that in the agreement to dispose of his one-eighth interest Hanley relied upon any representations of Clark and Sweeny, or either of them, was without any valid support. But that is no answer to the proposition that they fraudulently withheld from their co-owner the facts in respect to the discovery of ore in the Skookum mine, made in pursuance of work prosecuted by the company, in which he was a stockholder, and at his expense, of course, as well as theirs. That they did so withhold and conceal such facts is abundantly shown by the record, and, indeed, affirmatively appears from their own testimony. The Skookum mine was reached underground only through a tunnel that had its commencement in the ground of the Last Chance Mining Claim, of which the defendants Clark and Sweeny were the principal owners, and of which one Presley was superintendent. The underground work done in the Skookum mine was done also under the superintendency of Presley, and engaged under him was, among others, a shift boss named Kendall. Presley's testimony is to the effect that in running the diamond drill into the Skookum

ground, under the direction of Clark and Sweeny, he discovered, about April 24 or 25, 1898, a body of ore in the Skookum, into which, by the 30th day of that month, a drift had been driven about 35 or 40 feet, disclosing a body of ore of such dimensions and value as that Presley, when asked to give his estimate of the value of the Skookum mine in its condition on the 30th of April, 1898, when the contract between Hanley and Clark and Sweeny was made, answered: "Judging from the prices you would have to pay for mines similar to that, it would be in the neighborhood of two hundred and fifty or three hundred dollars. I don't know that you could get one for that price that was similar." Presley further testified that Clark and Sweeny were fully apprised of the ore discovery, but that Hanley was not, and, what is more, that Hanley was kept in ignorance of it by the express orders of Clark and Sweeny. We extract from his testimony:

"Q. By Complainant's Counsel: I will ask you if, during the month of March or April, 1898, any application was made to you by Mr. Hanley to go into that mine and examine it? A. Yes, sir. Mr. Hanley asked me if he could go through the mine. Q. Did he state any reason why he wanted to go into the mine? A. He said he had interests in the mine, and that he was entitled to go through. I told him I was instructed by Mr. Sweeny not to allow him to go into the mine. Q. State whether or not, acting under those directions, you prevented him from going. A. Yes, sir; I prevented him. Q. What did you say to him? A. I merely told him

that he could not go in the mine; that I was prohibited from allowing him to go into the mine. Q. Do you recollect whether he asked you more than once the privilege of going in? A. Yes, he did. I believe he asked just before he gave an option on his interest to Sweeny. Q. How long before? A. Well, I think it was the day before, if I remember right, or a day or two. I don't just remember. I know it was shortly before. Q. And you prohibited him from going in under the direction of Mr. Sweeny? A. Yes, sir. Q. Did you tell Mr. Hanley about what the true condition of the mine was at that time, or did you give him any information about it? A. I told him there was nothing in there to speak of. Q. I will ask you now if Mr. Sweeny instructed you or Mr. Clark not to disclose the condition of the mine to either Mr. Hanley or anybody else. A. Yes, sir; I was instructed so by Mr. Sweeny. Q. And you did not? A. No, sir; I did not. Q. Did you know anything about the negotiations between Hanley and Sweeny and Clark about the sale of his interest in the Skookum mine? A. Yes, I did. Q. Did you know anything about those negotiations either from Mr. Sweeny, or Mr. Clark, or both of them? A. I did not know personally through them, but I knew that they were making a deal. Q. That was before the deal was made, as you understood? A. Yes, sir. I knew it at the time. Q. You knew it was in contemplation? A. Yes, sir. Q. Did you have any conversation with them, or either of them, about their having made a deal with him, after it was done? A. Nothing only what Mr. Sweeny told me. Q. Mr.

Sweeny told you? A. Yes, sir. Q. About what time was it that he told you? A. Well, if I remember rightly, it was about the first of May, of 1898. Q. What did he say about his negotiations with Hanley about the deal? A. He came up from Spokane one afternoon, and in the evening about 7 or 8 o'clock he told me that he had secured an option on Kennedy Hanley's interest in the Chemung for \$20,000, and his interest in the Skookum for \$10,000. Q. Did you know what Mr. Hanley's interest was in the Chemung,—what it consisted of? A. I understood it to be a third and an eighth. Q. No; I mean in the Chemung, not in the Skookum. A. Oh! in the Chemung. I understand he had some stock, and some interest besides, in the first; but I don't know what it terminated in afterwards. Q. What interest did Mr. Sweeny say he had got in the Chemung? A. Why, he didn't state in particular what interest it was. He said he had his interest in the Chemung for \$20,000, all his interest. That is all I heard him say. Q. And what did he say about the Skookum? A. He said 'an option on his interest in the Skookum for \$10,000.'

Presley further testified that Kendall was the shift boss in charge of the work that penetrated the ore body referred to, and that about the latter part of May, 1898, he (Presley) discharged him. When asked why, Presley answered:

“Why, he came to me a short time before,—I don't remember the time—but he asked me questions in regard to the Skookum ground, and if Kennedy Hanley did not



own interests in there. I did not make him any answer. I simply laid him off the first opportunity I got.

Q. What was the reason? Why did you lay him off?

A. Well, my instructions were to not allow any one to know any more about it than possible. That was one of the reasons. Q. Was it not, Mr. Presley, for the purpose of protecting the interests of your employers,

Sweeny and Clark? A. Yes, that was my idea of it, and that is what I tried to do right along. Q. Did you

ever admit any other person into that mine along about that time? A. Why, I never admitted any one at my own responsibility, unless they were with Mr. Sweeny.

Mr. Sweeny brought some men there with him—some that come from the East. Q. When did he bring men there? A. Along the first of May.”

Kendall's testimony is to the effect that shortly before his discharge, and about the time the ore was struck in the Skookum mine, he told Presley that he had met Hanley on the street the evening before, and that Hanley had asked him “concerning this drift,—how far we were in, and if we had any ore, and I said I gave him no set answer. He kind of smiled, and says, ‘Well, maybe he has an interest in it,’ and walked off.” The witness further said that he did not think that he told Presley exactly what he had replied to Hanley, and in answer to the question, “But you did not tell Hanley anything?” answered: “No, not exactly. I told him there was some ore. I did not give him any decided answer.” And Kendall was discharged for the reason already stated. Clark himself says in his evidence that, when asked by

Hanley concerning the mine, he said that they "had some encouragement," but he expressly states that he omitted "details." He further admitted in his testimony that the "fairness" of contracting for Hanley's interest without telling him what he knew "was not considered" by him. Yet within a few days of the discovery of the large and valuable ore body in the mine, Clark telephoned to Hanley, requesting him to come to Spokane, and on his arrival met him at his hotel, and began negotiations which culminated in the contract of April 30, 1898. A grosser fraud upon a co-owner of the property it is difficult to conceive. Now, what was the contract of April 30, 1898? At that time the mandamus proceedings against the administrator of the McKelvey estate to compel him to execute a deed for the one-third interest of that estate in the Skookum mine to the Chemung Mining Company in pursuance of the order of the probate judge, made August 13, 1897, were still pending in the supreme court of the state of Idaho; and that interest was then still being claimed by Hanley under the deed executed to him by the administrator, and by Clark and Sweeny as the property of the Chemung Mining Company. The proposition made by Hanley to Clark and Sweeny on that day, under and pursuant to the negotiations initiated at their request, was in writing, and is in evidence. It is as follows:

"My proposition is this: I will sell my one hundred thousand (100,000) shares in the Chemung Co. (at 20 cents a share) for twenty thousand dollars (\$20,000.00). I will sell my 1-3 and 1-8 interest in the Skookum claim



at the rate of thirty thousand dollars for the whole claim.

“Spokane, April 3th, 1898.

“K. J. HANLEY.”

Hanley's testimony is to the effect that throughout the negotiations leading up to the contract he refused to sell the one-eighth interest in the Skookum mine, which he confessedly owned, without including also the McKelvey one-third interest, which was in dispute between the parties; and the defendant Clark himself seems to admit as much, although his testimony is to the effect than Hanley finally agreed otherwise. On his cross-examination Clark was asked:

“Q. Did Mr. Hanley at any time ever offer to sell you either the one-eighth or the one-third interest in the Skookum mine separately from the other interest—separately from each other? A. He did offer to sell them separately from each other. Well, that is to say—No, he never at any one time said—He never at any one time entered into negotiations about the one-eighth without having a negotiation at the same time about the one-third. Q. The negotiations always covered both of his claimed interests, you denying that he had any interest in the one-third, and he claiming that he had, and you admitting that he owned a one-eighth interest? A. I think I asked Hanley at one time to put a price on everything he owned and everything he claimed up there, and he, in general, answered that he wanted to put a price on the whole of it; but when he came down to actually agreeing upon something we agreed as I have said.”

The written proposition of Hanley, by which he offered to sell the one-third and one-eighth interests at the rate of \$30,000 for the whole claim, would, as will readily be seen, make those interests amount to something over \$12,000, and Hanley admits that in the subsequent discussion of his written proposition he receded from that to the extent of finally agreeing to take for those two interests \$10,000, and \$20,000 for his 100,000 shares in the Chemung Company. The testimony of Clark and Sweeny, on the other hand, is to the effect that the final agreement was \$20,000 for the Chemung stock, and the one-eighth interest in the Skookum mine, and \$10,000 for the McKelvey one-third interest. It is not disputed that the papers in respect to the transaction were to be, and in fact were, placed in escrow. The papers were prepared in the office of Clark and Sweeny on Saturday morning, April 30, 1898, in some haste, in order that they might be deposited in a bank before the closing hour of 12 o'clock of that day. Separate deeds were prepared for the two interests in the Skookum mine, and each was signed by Hanley in Clark and Sweeny's office. All three of them at the same time signed an indorsement upon each of two envelopes prepared by a clerk of Clark and Sweeny, and under the latter's dictation, one of which reads as follows:

“This envelope is placed in escrow with E. J. Dyer, cashier of the Exchange National Bank of Spokane, Wash., on the following terms and conditions: If Chas. Sweeny and F. Lewis Clark shall pay into said bank, for the credit of Kennedy J. Hanley, eighteen thousand dol-

lars (\$18,000.00), on or before July 1st, 1898, then this envelope, with its contents, shall be delivered to said Sweeny and Clark; otherwise, it shall be delivered to Kennedy J. Hanley.

“Dated at Spokane, Wash., this 30th day of April, A. D. 1898.”

And the other:

“This envelope is placed in escrow with E. J. Dyer, cashier of the Exchange National Bank of Spokane, Wash., on the following terms and conditions: If Chas. Sweeny and F. Lewis Clark shall pay into the said bank for the credit of Kennedy J. Hanley ten thousand (\$10,000.00) dollars on or before August 1, 1898, then this envelope, with its contents, shall be delivered to said Sweeny and Clark; otherwise, it shall be delivered to Kennedy J. Hanley.

“Dated at Spokane, Wash., this 30th day of April, A. D. 1898.”

There is no dispute in the evidence in respect to the fact that under the terms of the agreement of sale, whatever they were, Hanley was to be, and in fact was, paid \$2,000 in cash in consideration of the options; and Hanley's testimony is to the effect that after the signing of the deeds and the indorsements upon the two envelopes he placed in the envelope requiring the further payment of \$18,000 the certificate for the 100,000 shares of the stock in the Chemung Mining Company, and in the other envelope the two deeds for his interest in the Skookum mine, and that the three parties then left the office, and went to the bank, taking the papers along. At the bank

was a notary public, before whom Hanley acknowledged the execution of the deeds, and received from Clark and Sweeny a check for \$2,000. It is contended on behalf of Hanley that, while he went to the desk of one of the bank clerks to make some arrangement in respect to the check, and after the notary had returned the deeds with his certificate of acknowledgment thereon, Sweeny fraudulently put the deed for Hanley's undisputed one-eighth interest in the Skookum mine in the envelope with the certificate of stock in the Chemung Mining Company, containing the indorsement requiring the additional payment of \$18,000, and in the other envelope placed the deed covering the McKelvey one-third interest in the Skookum mine, and in that condition the envelopes were sealed, and left with Dyer in escrow. The testimony of Clark and Sweeny is to the effect that the papers were so placed, not only with the knowledge of Hanley, but that it was the distinct understanding and agreement that they should be so placed; the contract, according to their testimony, being that the \$20,000 sale and purchase, if consummated, should embrace both the Chemung stock and the one-eighth interest in the Skookum mine, and that the \$10,000 sale and purchase, if consummated, should embrace only the McKelvey one-third interest in the mine. There is no doubt that some support is added to this contention by the fact that separate deeds were executed for the one-third and one-eighth interests, while one might have been made to embrace both, and by the further fact that in one of the indorsements the time fixed for the exercise of the option was July 1, 1898, and in the other—that in fact

covering the deed for the McKelvey one-third interest— was August 1, 1898, which latter date Clark and Sweeny testify was so fixed in order to give more time for the decision by the supreme court of Idaho of the mandamus case. But it must be remembered that all of the papers were prepared by Clark and Sweeny, and that it was at their suggestion that separate deeds were executed; and, while the fixing of August 1, 1898, as the date for the taking up of the deed for the McKelvey interest was very likely for the purpose of allowing more time for the decision of the mandamus case, that fact makes but little against Hanley's contention that the envelope bearing that indorsement was also to contain the deed covering the one-eighth interest. There can be no doubt that Hanley's proposition was to sell his stock in the Chemung Company for \$20,000, and both of the interests claimed by him in the Skookum mine together for something over \$12,000. There can be doubt of that fact, for the proposition was in writing, and is in evidence. We think it quite certain, also, that throughout the negotiations preceding the final agreement Hanley insisted that the two interests, one of which he confessedly owned, and the other claimed by him, should go together, and that he would not sell to the defendant Clark and Sweeny one without selling both; for such is not only Hanley's testimony, but is practically admitted by Clark. From his written offer it appears that Hanley valued his stock in the Chemung Company at \$20,000, and both interests in the mine together at but little over \$12,000. And in the discussion that resulted in Hanley's reduc-



ing his price for those two interests to \$10,000 it does not appear that Clark or Sweeny objected to his demand of \$20,000 for the Chemung stock. Under such circumstances it does not appear to us reasonable, or at all probable, that Hanley would, as Clark and Sweeny contend he did, have finally agreed to sell the one-eighth interest in the mine, which he admittedly owned, in addition to the 100,000 shares of the stock of the Chemung Company, for \$20,000. In that view, also, \$10,000 would certainly appear to be an extraordinary and extravagant price for Hanley to demand, and Clark and Sweeny to agree conditionally to give, for the disputed one-third interest in the same mine. It appears further that on the 6th or 7th day of June, 1898, Clark and Sweeny applied to Hanley for an extension of the time within which to take up the escrows. They wanted until October 1, 1898, and agreed to pay Hanley \$2,000 therefor, to be applied on the purchase price. Hanley objected to making the extension run to October 1st, and September 20, 1898, was finally agreed upon. Clark testified that they only wanted the extension to apply to the Chemung stock and the one-eighth interest in the mine, as the supreme court of Idaho a short time before had affirmed the decision of the trial court in the mandamus case; but that Hanley insisted that it should also apply to the one-third interest therein; as he wanted "to keep on making this fight." The record shows that there was at that time a petition pending in the supreme court of Idaho for a rehearing of the mandamus case, which, however, was finally disposed of within the few days thereaf-



ter by a denial of it. This statement of Clark as to their wishes in regard to the extension sought cannot be reconciled with the statement of Hanley, which is not denied, that Sweeny applied for a further extension of time within which to take the one-third interest in September, 1898. As a matter of fact, the extension was granted in the case of each of the escrows, that on the envelope calling for the additional payment of \$18,000 in these words:

"I hereby extend the above escrow to Sept. 20th, 1898.

"Spokane, W., June 6, '98. Kennedy J. Hanley."

—And that on the envelope calling for the payment of \$10,000:

"I hereby extend the above escrow to Sept. 20th, 1898.

"Spokane, W., June 7, '98. Kennedy J. Hanley."

The \$2,000 payment in consideration of the extension was evidenced by writing as follows:

Spokane, June 7, 1898.

"E. J. Dyer, Csh.: This is to certify that Clark and Sweeny have paid \$2,000.00 on the \$18,000.00 escrow agreement due Sept. 20, 1898; so that only \$16,000.00 is due on same. Kennedy J. Hanley."

Clark testified that, as soon as the papers were left in escrow at the bank on April 30, 1898, he went back to his office, where Goodspeed, his clerk, said to him, "Give me a description exactly what those envelopes contained, so that I can keep track of them," and that he replied that "the \$18,000 envelope—the one that we were required to pay on July 1st—contained an eighth interest in the Skookum and 100,000 shares of Chemung stock,"

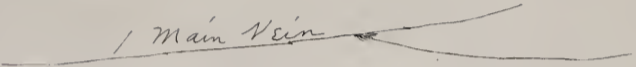
and that the other contained "one-third interest to the Skookum property, which was payable on August 1st," and that Goodspeed "at once sat down and prepared a copy of the two escrow agreements, and added to each copy the distinguishing statement that I made to him," which were afterwards put in their letterpress book. Clark further testified that at the time he and Hanley were talking about the June extension he called for the letterpress book, and read to Hanley therefrom a "description of the escrows, and the memorandum which described what the envelopes contained, which," added the witness, "was necessary for me to know and for Mr. Hanley to know in order to know what we were paying on when we went down to the bank." This statement of Clark is denied by Hanley, who says that the letterpress book was not shown to him in June at all, but was shown to him by Sweeny on the 17th of September, whereupon he disputed it, and went at once to the bank, and told Dyer, "I am dealing with two rascals, and I want you to watch the escrows." Although Dyer was a witness on behalf of the defendants, he was not asked anything in respect to this testimony of Hanley. While the indorsements on the envelopes did not mention their contents, the amounts specified to be paid as a condition to their delivery plainly showed the one that covered the Chemung stock, and also—if Clark and Sweeny's version of the agreement be true—the deed for the one-

eight interest in the mine. There was, therefore, no such necessity as that testified to by Clark of resorting to the memorandum that he had caused to be entered in the letterpress book of Clark and Sweeny, nor any occasion whatever to resort to anything but the indorsements on the envelopes to know which covered the Chemung stock; for the balance required to take up the contents of that envelope was there expressly declared to be \$18,000. If the agreement really was, as is contended on the part of the defendants, that that envelope should—as in fact it did—also contain the deed for the one-eighth of the Skookum mine, there would not have been the slightest occasion for Clark or Sweeny to have called Hanley's attention to any memorandum that they made in their office in respect to the matter. The fact of the making of the memorandum, and especially Clark's testimony in respect to it, we cannot but regard as suspicious. Looking at all of the facts and circumstances of the case, and carefully weighing them, we are satisfied that the truth is that the one-eighth interest in the mine was not, by the agreement of the parties, coupled with the Chemung stock; that the deed therefor was improperly placed in the envelope containing the stock; and that Clark and Sweeny received it without consideration, and in fraud of Hanley's rights. The judgment is reversed, and cause remanded to the court below for further proceedings not inconsistent with this opinion.



Plain City' Reel' No 38

1 Main vein



Platt E. Rubin 38  
Ed. R.





**Plaintiffs' Exhibit No. 38A.**

**CHARLES SWEENY.**

Manager of Empire State-Idaho Mining and Developing Co., Last Chance Mining Company, Sierra Nevada Mining Co., Wardner, Idaho; Native Silver Bell Mining Company, Slocan, B. C.; Buffalo Hump Mining Co. Buffalo Hump Syndicate, Robbins Mining District, Idaho.

Spokane, Wash., Jan'y. 31, 1902.

Yes, I am the Charles Sweeny referred to in that decision, and I want to say here that the charges made in that case is a wanton lie and without any foundation, and that such charges could have been conceived only by persons who were capable of planning and doing those things themselves. We bought and paid for that property and only received what we bought, and have since discovered the property has no possible value except as a ranch.

[Endorsed]: Filed Mch. 6, 1902. A. L. Richardson, Clerk.

No. 870. United States Circuit Court of Appeals for the Ninth Circuit. Plaintiffs' Exhibit 38A. Received July 28, 1902. F. D. Monckton, Clerk. By Meredith Sawyer, Deputy Clerk.

## Plaintiffs' Exhibit No. 51.



[Endorsed]: Plffs. Ex. 51, Showing S. W. Cor. of Cross-cut and Intermediate Drift 1,200 Level—Showing Fresh Face. Filed March 6, 1902. A. L. Richardson, Clerk.

No. 870. U. S. Circuit Court of Appeals for the Ninth Circuit. Plaintiffs' Exhibit 51. Received July 28, 1902. F. D. Monckton, Clerk. By Meredith Sawyer, Deputy Clerk.

Plaintiffs' Exhibit No. 52.



[Endorsed]: Plffs. Ex. 52, Showing Width of Intermediate Drift Just East of Crosscut, 1,200 Level. Filed March 6, 1902. A. L. Richardson, Clerk.

No. 870. U. S. Circuit Court of Appeals for the Ninth Circuit. Plaintiffs' Exhibit 52. Received July 28, 1902. F. D. Monckton, Clerk. By Meredith Sawyer, Deputy Clerk.

## Plaintiffs' Exhibit No. 53.



[Endorsed]: Plffs. Ex. 53, West Face, East Drift, 1,200  
—in Ella Ld. Filed March 6, 1902. A. L. Richardson,  
Clerk.

No. 870. U. S. Circuit Court of Appeals for the Ninth  
Circuit. Plaintiffs' Exhibit 53. Received July 28, 1902.  
F. D. Monckton, Clerk. By Meredith Sawyer, Deputy  
Clerk.

**Defendants' Exhibit No. 1.**

Spokane, Wash., Oct. 20, 1899.

No. 152.

**THE EXCHANGE NATIONAL BANK,**

**\$7,000.00**

Pay to Forster & Wakefield or order Seven Thousand  
& 00-100 Dollars.

**BUFFALO HUMP MINING CO.,**

**By F. LEWIS CLARK,**

**Treasurer.**

General Acct.

Washington.

[Two Cents U. S. Int. Rev. Stamp.]

[Stamped]: Exchange National Bank. Paid Oct. 21,  
1899. Spokane, Wash.

[Endorsed]: Forster & Wakefield.

**Defendants' Exhibit No. 1.**

Spokane, Wash., November 27, 1899.

No. 78.

THE EXCHANGE NATIONAL BANK,

\$1,000.00

Pay to F. R. Culbertson or order One Thousand Dollars.

BUFFALO HUMP MINING CO.,

By F. LEWIS CLARK,

Treasurer.

Tiger &amp; Poorman Acct.

Washington.

[Stamped]: Exchange National Bank. Paid Dec. 29,  
1899. Spokane, Wash.

[Two Cents U. S. Int. Rev. Stamp.]

[Stamped]: Pay Exchange Nat'l Bank, Spokane,  
Wash., or order. The First Nat'l Bank of Wallace,  
Wallace, Idaho.

[Endorsed]: For deposit in First Nat. Bank, Wallace,  
Ida. F. R. Culbertson.

Filed Mch. 6, 1902. A. L. Richardson, Clerk.



Burke, Idaho, Nov. 24th, 1899.

F. R. Culbertson, in Account with Buffalo Hump Mining  
Co., Operating Tiger & Poorman Mine.

For deed to one-fifth (1-5th) interest Ella and Miss-  
ing Link Fraction Lode Claims in La Landa  
Mining District, Shoshone Co., Ida.....\$1000

Certified correct:

Approved for payment:

ALLEN L. DUKEMAN.

Received the sum of One Thousand & 00-100 Dollars,  
in full payment of above account.

F. R. CULBERTSON.

11-27-1899.

[Endorsed]: Deft. Ex. 1. Buffalo Hump Mining Co.,  
operating Tiger & Poorman Mine. Account of F. R.  
Culbertson. Amount \$1,000.00. Check No. 78. Voucher  
No. 100. Date paid, 11-27-99.

No 870. United States Circuit Court of Appeals for  
the Ninth Circuit. Defendants' Exhibit 1. Received  
July 28, 1902. F. D. Monckton, Clerk. By Meredith  
Sawyer, Deputy Clerk.

Filed Mch. 6, 1902. A. L. Richardson, Clerk.



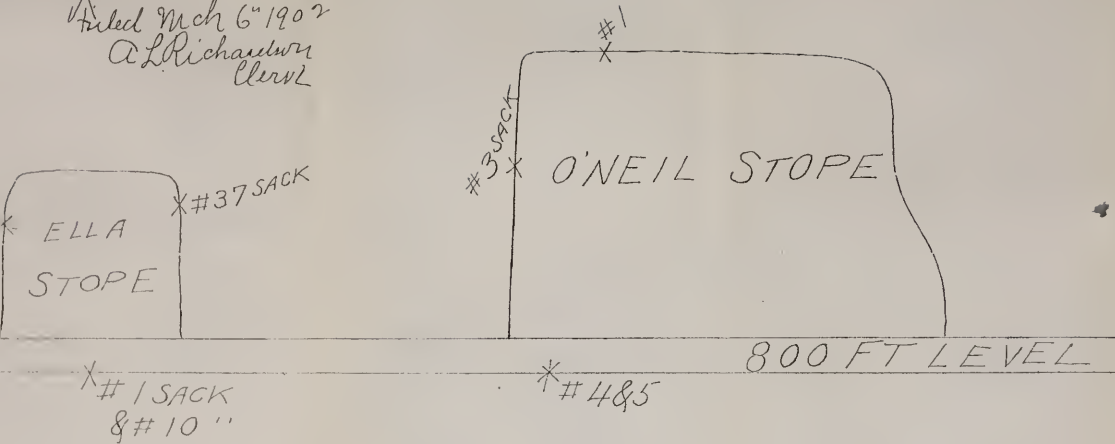
No 870  
U S CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT

DEFENDANTS EXHIBIT 10

Received JULY 28, 1902

F D MONCKTON, Clerk  
By MEREDITH SAWYER, Deputy Clerk.

Filed Mch 6<sup>th</sup> 1902  
A L Richardson  
Clerk



Depth Ex 10



**Defendants' Exhibit No. 11.**

August 25th, 1899.

Patrick Clark, Esqr., Spokane, Wash.

My Dear Sir: At the time of the consolidation of the Tiger & Poorman it was understood that I was to have a 1-5 interest in the Ella & Missing Link Fractions and I have deeds from you—Kingsbury & Harvey for a 1-20 from each but I am unable to find a deed from Jim for a 1-20 from him. I have looked through my papers but am unable to locate the deed from Jim altho I am under the impression that he sent it. "If so," it was not placed on record. I find by reference to my letter book and letters from you that your deeds were sent from Spokane, and you wrote me at the time that Jim was in Rossland, B. C. and to send deed to him there for the 1-20 interest from him and he would sign and return, and I find by my letter-book that this deed for his signature was sent to him at Rossland. As there was some delay in this the papers got separated and I did not discover until to-day that I did not have Jim's deed with the others. While I may have it somewhere among my papers but have not been able to find it to-day and as it has not been put on record I concluded to make a new deed for Jim to sign. I send it to you, as you are familiar with all the circumstances, and would like you to ask Jim to sign same and send to me.

If he consents to this you can have Mr. Eltinge take his acknowledgment and insert Mrs. Clark's first name.

You know that I have been paying 1-5 of the taxes on the property for several years. I also have your letter of Jany. 31st, 1896, saying you had spoken to all the parties interested and that it was satisfactory with them and for me to make out the deeds and send to each party, which was done. From this there should be no question about getting this 1-20 interest from Jim if you will explain the matter to him, and as to why I am sending you the deed for him to sign.

I would say that I think we can sell this property to Sweeny, and I have suggested to Mr. Sweeny that as you represented the controlling interest that he see you about price and as to about what was taken out of it.

My talk with Sweeny led me to look up my papers in the matter and this how I discovered the 1-20 interest or deed from Jim to me short. Sweeny would also, I think, be willing to take your interest in the Sheridan at a reasonable price.

You know that we have some agreements out for deeds to surface rights to property holders on the Sheridan that we the Tiger & Poorman and yourself or rather me acting for you under power of attorney have given these town property holders an agreement for deed when we got patent to Sheridan in consideration of their not adversing application for patent, and this should be carried out as agreed upon.



I think it would be well to have this attended to at once as the parties interested look to you and I to see that this carried out.

With regards,

Very truly yours etc.,

F. R. CULBERTSON.

[Endorsed]: Filed Mch. 6, 1902. A. L. Richardson, Clerk.

No. 870. United States Circuit Court of Appeals for the Ninth Circuit. Defendants' Exhibit 11. Received July 28, 1902. F. D. Monckton, Clerk. By Meredith Sawyer, Deputy Clerk.

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**Defendants' Exhibit No. 12.**

REPUBLIC CONSOLIDATED GOLD MINING CO.

Spokane, Washington, Sept. 7, 1899.

F. R. Culbertson, Esq., Burke, Idaho.

Dear Sir: Enclosed herewith please find deed from James Clark and wife to yourself for 1-20 interest in the Ella Fraction and Missing Link lodes, all of which I hope you will find correct.

Yours truly,

CHAS. S. ELTINGE.

What is P. T. stock worth under the new management?

[Endorsed]: 9-9-99. Defts. Ex. 12. Filed March 6, 1902. A. L. Richardson, Clerk.

No. 870. United States Circuit Court of Appeals for the Ninth Circuit. Defendants' Exhibit 12. Received July 28, 1902. F. D. Monckton, Clerk. By Meredith Sawyer, Deputy Clerk.

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**Defendants' Exhibit No. 13.**

Chas. S. Eltinge, Esqr., Spokane, Wash.

D Sir: I beg to acknowledge yours 7th enclosing deed from Jas. Clark & wife for 1-20 interest in Ella Fraction.

Please express my thanks to Jim for the deed and also to Patsey for his attention to the matter.

T. & P. stock I understand is selling for 25c. share.

Very truly yours,  
F. R. CULBERTSON.

[Endorsed]: Defts. Ex. 13. Filed Mch. 6, 1902. A. L. Richardson, Clerk.

No. 870. United States Circuit Court of Appeals for the Ninth Circuit. Defendants' Exhibit 13. Received July 28, 1902. F. D. Monckton, Clerk. By Meredith Sawyer, Deputy Clerk.

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**Defendants' Exhibit No. 19.**

**Mining Deed.**

This Indenture, made this 25th day of August, A. D.: 1899, Between Jas. Clark and Charlotte Clark, his wife,

of the County of Spokane and State of Washington, parties of the first part, and F. R. Culbertson, of the County of Shoshone, and State of Idaho, party of the second part,

Witnesseth, That the said parties of the first part, for and in consideration of the sum of One (\$1.00) Dollars, Gold Coin of the United States, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath Granted, Bargained Sold, Remised, Released, and forever Quit-Claimed, and by these presents, does Grant, Bargain, Sell, Remise, Release, and forever Quit-claim, unto the said party of the second part, his heirs and assigns, the undivided one-twentieth (1-20) interest in the Ella Fraction and Missing Link Fraction Lode Quartz claims, as located, surveyed, recorded and held by said party of the first part, situated at Burke, Idaho,

[This deed is executed and delivered in lieu of a former deed between the same parties and for the same interest in said claims which said deed has been lost or destroyed.]

La Landa Mining District, Shoshone County, State of Idaho, together with all the dips, spurs and angles, and also all the metals, ores, gold and silver-bearing quartz rock and earth therein, and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed, and also all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the rents, issues and profits thereof; and also all the

estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to, the said premises, and every part and parcel thereof, with the appurtenances.

To Have and to Hold, All and singular, the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, his heirs and assigns forever.

In Testimony Whereof, The said parties of the first part have hereunto set their hand and seal the day and year first above written.

JAMES CLARK. [Seal]

CHARLOTTE CLARK. [Seal]

Signed, Sealed and delivered in the presence of:

CHAS. S. ELTINGE.

[Fifty Cents U. S. Int. Rev. Stamp. Canceled.]

State of Washington, }  
 County of Spokane. } ss.

I, Chas. S. Eltinge, a Notary Public in and for said County and State, do hereby certify that on this 7th day of September, A. D. 1899, personally appeared before me, James Clark and Charlotte Clark, his wife, to me known to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Given under my hand and official seal, this 7th day of September, A. D. 1899.

[Seal]

CHAS. S. ELTINGE,

Notary Public in and for said County and State, Residing at Spokane, Wash.

[Ten Cents U. S. Int. Rev. Stamp. Canceled.]

[Endorsed]: No. 1591. Mining Deed. James Clark and Charlotte Clark, his wife, to F. R. Culbertson.

State of Idaho, }  
County of Shoshone. } ss.

I hereby certify that the within instrument was filed for record in the office of the County Recorder of said County, on the 9th day of September, A. D. 1899, at 2 o'clock P. M. at the request of F. R. Culbertson and recorded on page 532 of Book "14" of Deeds.

HORACE M. DAVENPORT,

County Recorder.

By John P. Sheehy,

Deputy.

Filed March 6, 1902. A. L. Richardson, Clerk.

No. 870. United States Circuit Court of Appeals for the Ninth Circuit. Defendants' Exhibit 19. Received July 28, 1902. F. D. Monckton, Clerk. By Meredith Sawyer, Deputy Clerk.

**Defendants' Exhibit No. 20.****Mining Deed.**

This Indenture, Made this 11th day of February, A. D., 1896, Between James Harvey of Burke, of the County of Shoshone and State of Idaho, party of the first part, and F. R. Culbertson of the County of Shoshone and State of Idaho, party of the second part,

Witnesseth, That the said party of the first part, for and in consideration of the sum of One & 00-100 Dollars, Gold Coin of the United States, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath Granted, Bargained, Sold, Remised, Released, and forever Quit-Claimed, and, by these presents does Grant, Bargain, Sell, Remise, Release, and forever Quit-Claim unto the said party of the second part, his heirs and assigns, the undivided one-twentieth (1-20) interest in the Ella Fraction and Missing Link Fraction as located, surveyed, recorded and held by said party of the first part, situated at Burke, in the La Landa Mining District, Shoshone County, State of Idaho, together with all the dips, spurs and angles, and also all the metals, ores, gold and silver bearing quartz, rock and earth therein, and all the rights, privileges and franchises thereto incident, appendent and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the rents, issues and profits thereof; and also all the estate, right title, inter-



est, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to, the said premises, and every part and parcel thereof with the appurtenances.

To Have and to Hold, All and singular, the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part. his heirs and assigns forever.

In Testimony Whereof, The said party of the first part has hereunto set his hand and seal the day and year first above written.

JAMES P. HARVEY. [Seal]

Signed, Sealed and delivered in the presence of:

State of Idaho, }  
County of Shoshone. } ss.

I, H. M. Davenport, a Notary Public in and for said County and State, do hereby certify that on this 24th day of February, A. D. 1896, personally appeared before me James P. Harvey, to me known to be the individual described in and who executed the within instrument, and acknowledged that he signed and sealed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal, this 24th day of February, A. D., 1896.

[Seal]

H. M. DAVENPORT,  
Notary Public.

[Endorsed]: No. 1458. Mining Deed. James P. Harvey to F. R. Culbertson.

County of Shoshone, }  
 State of Idaho. } ss.

I hereby certify that the within instrument was filed for record in the office of the County Recorder of said County, on the 26th day of August, A. D. 1899, at 9 o'clock A. M., at the request of F. R. Culbertson, and recorded on page 494 of Book "14" of Deeds.

HORACE M. DAVENPORT,

County Recorder.

By John P. Sheehy,

Deputy.

Filed March 6, 1902. A. L. Richardson, Clerk.

No. 870. United States Circuit Court of Appeals for the Ninth Circuit. Defendants' Exhibit 20. Received July 28, 1902. F. D. Monckton, Clerk. By Meredith Sawyer, Deputy Clerk.

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**Defendants' Exhibit No. 21.**

**Mining Deed.**

This Indenture, Made this 6th day of February, A. D. 1896, Between Patrick Clark and his wife, Mary R. Clark, of the County of Spokane and State of Washington, parties of the first part, and F. R. Culbertson, of the County of Shoshone and State of Idaho, party of the second part,

Witnesseth, That the said part is of the first part, for and in consideration of the sum of One Dollars, Gold

Coin of the United States, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath Granted, Bargained, Sold, Remised, Released, and forever Quit-Claimed, and, by these presents, does Grant, Bargain, Sell, Remise, Release, and forever Quit-Claim, unto the said party of the second part, his heirs and assigns, the undivided one-twentieth (1-20) interest in the Ella Fraction, and the undivided one-twentieth (1-20) interest in the Missing Link Claim, as located, surveyed, recorded and held by said parties of the first part, situated at Burke, in the La Landa Mining District, Shoshone County, State of Idaho, together with all the dips, spurs and angles, and also all the metals, ores, gold and silver-bearing quartz, rock and earth therein, and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in or to, the said premises, and every part and parcel thereof, with the appurtenances.

To Have and to Hold, All and singular, the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, his heirs and assigns forever.

In Testimony Whereof, The said parties of the first part have hereunto set their hand and seal the day and year first above written.

PATRICK CLARK. [Seal]

MARY R. CLARK. [Seal]

Signed, Sealed and delivered in the presence of:

F. E. LUCAS.

State of Washington, }  
County of Spokane. } ss.

I, W. M. Shaw, a Notary Public in and for said County and State, do hereby certify that this seventh day of March, A. D., 1896 personally appeared before me Patrick Clark and his wife Mary R. Clark to me known to be the individuals described in and who executed the within instrument, and acknowledged that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal, this 7th day of March, A. D., 1896.

[Seal]

W. M. SHAW,

Notary Public, residing at Spokane, Wash.

[Endorsed]: No. 1457. Mining Deed. Patrick Clark and Mary R. Clark, his wife, to F. R. Culbertson.

State of Idaho, }  
County of Shoshone. } ss.

I hereby certify that the within instrument was filed for record in the office of the County Recorder of said County, on the 26th day of August, A. D., 1899, at 9

o'clock A. M., at the request of F. R. Culbertson and recorded on page 493 of book "14" of Deeds.

HORACE M. DAVENPORT,  
County Recorder.  
By John P. Sheehy,  
Deputy.

Filed March 6, 1902, A. L. Richardson, Clerk.

No. 870. United States Circuit Court of Appeals for the Ninth Circuit. Defendants' Exhibit 21. Received July 28, 1902. F. D. Monckton, Clerk. By Meredith Sawyer, Deputy Clerk.

---

**Defendants' Exhibit No. 22.**

**Mining Deed.**

This Indenture, Made this 6th day of February, A. D., 1896, Between B. C. Kingsbury of the County of Spokane and State of Idaho, party of the first part, and F. R. Culbertson of the County of Shoshone and State of Idaho, party of the second part,

Witnesseth, That the said party of the first part, for and in consideration of the sum of one dollar, Gold Coin of the United States, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath Granted, Bargained, Sold, Remised, Released, and forever Quit-Claimed, and, by these presents, does Grant, Bargain, Sell, Remise, Release, and forever Quit-Claim, unto the said party of the second part, his heirs and assigns, the undivided one-twentieth



(1-20) interest in the Ella Fraction, and the undivided one-twentieth (1-20) interest in the Missing Link Claim, as located, surveyed, recorded and held by said party of the first part, situated at Burke, in the La Landa Mining District, Shoshone County, State of Idaho, together with all the dips, spurs and angles, and also all the metals, ores, gold and silver-bearing quartz, rock and earth therein, and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to, the said premises, and every part and parcel thereof, with the appurtenances.

To Have and to Hold, All and singular, the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, his heirs and assigns forever.

In Testimony Whereof, The said party of the first part has hereunto set his hand and seal the day and year first above written.

BENJAMIN C. KINGSBURY. [Seal]

Signed, Sealed and delivered in the presence of:

F. E. LUCAS.



State of Washington, }  
County of Spokane. } ss.

I, W. M. Shaw, a Notary Public in and for said County and State, do hereby certify that on this seventh day of March, A. D., 1896, personally appeared before me Benjamin C. Kingsbury to me known to be the individual described in and who executed the within instrument, and acknowledged that he signed and sealed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal, this 7th day of March, A. D., 1896.

[Seal]

W. M. SHAW.

Notary Public, Residing at Spokane, Wash.

[Endorsed]: E.—6. Mining Deed. Benjamin C. Kingsbury to F. R. Culbertson.

State of Idaho, }  
County of Shoshone. } ss.

I hereby certify that the within instrument was filed for record in the office of the County Recorder of said County, on the 26th day of August, A. D., 1899, at 9

o'clock A. M., at the request of F. R. Culbertson and recorded on page 496 of Book "14" of Deeds.

HORACE M. DAVENPORT,

County Recorder.

By John P. Sheehy,

Deputy.

Filed March 6, 1902. A. L. Richardson, Clerk.

No. 870. United States Circuit Court of Appeals for the Ninth Circuit. Defendants' Exhibit 22. Received July 28, 1902. F. D. Monckton, Clerk. By Meredith Sawyer, Deputy Clerk.

# LONGITUDINAL SECTION

SHOWING RELATIVE SIZE CLARK & LOWER STOPES.

SCALE 40 FT = 1 INCH

*Refs to P.C.*

*Depth to 400'*

# 870

U S CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PLAINTIFFS EXHIBIT #23 Long. Fudinal Section showing relat. size Clark & lower stopes

Received July 29 1909

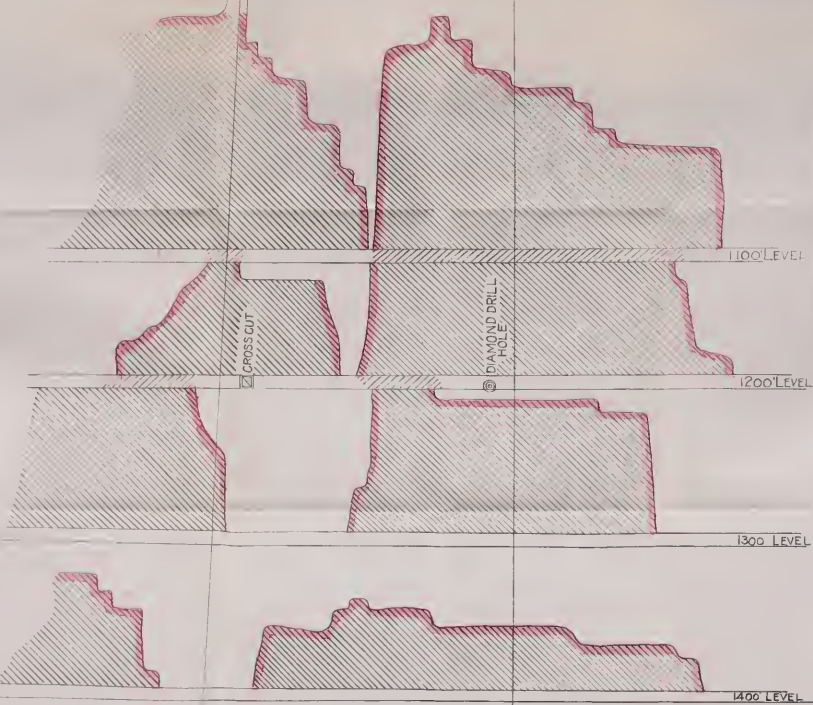
F. D. MOUNCKTON, Clerk  
By MEREDITH SAWYER, Deputy Clerk

CLARK STOPE

O'NEIL STOPE

800 LEVEL

PEARMAN — ELLA GROUND — O'NEIL —>



1400 LEVEL

o'clock A. M., at the request of F. R. Culbertson  
recorded on page 100

Fi

Nc

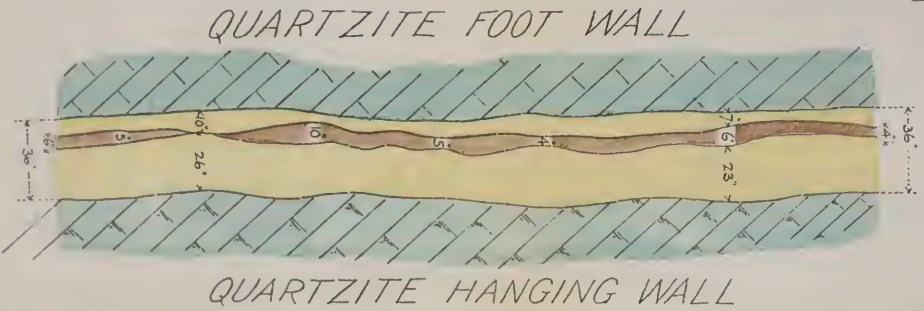
the

July

Sawy



- LEGEND
- COUNTRY ROCK ..... [light blue hatched box]
  - VEIN FILLING-WASTE.... [yellow box]
  - QUARTZ & ORE ..... [brown box]



2  
No 870

U S CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT

PLAINTIFFS EXHIBIT 44, Roof of Clark-Store  
Received JUL 28 1902.  
F D MOUNTON, Clerk.  
S. MEREDITH SAWYER,  
Deputy Clerk.

ROOF OF CLARK STORE  
SCALE 4FT TO THE INCH

Roll 244

1862

Jan	1	10
Feb	1	10
Mar	1	10
Apr	1	10
May	1	10
Jun	1	10
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1863

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1864

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SOUTH ←

→ NORTH

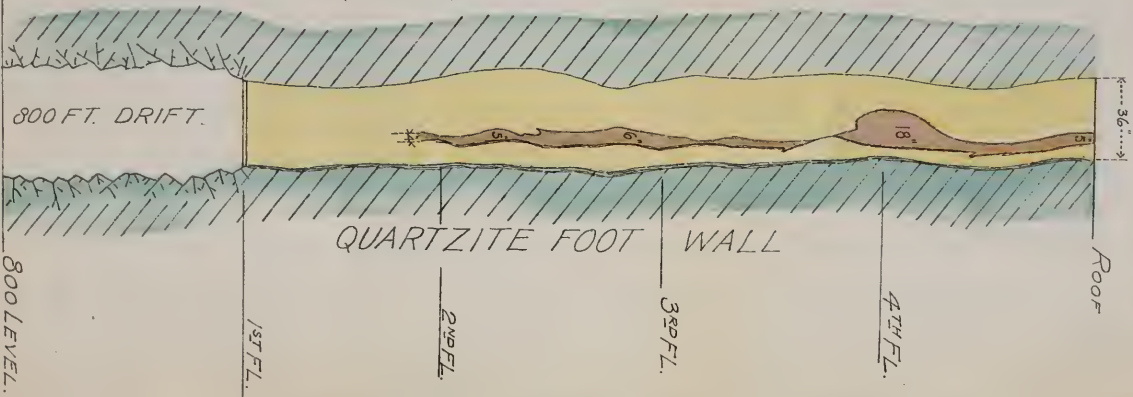
LEGEND

- COUNTRY ROCK
- VEIN FILLING-WASTE
- QUARTZ & ORE

WEST FACE OF  
CLARK STOPE.  
SCALE 4 FT TO THE INCH.

QUARTZITE HANGING WALL

QUARTZITE FOOT WALL



2 No 870.

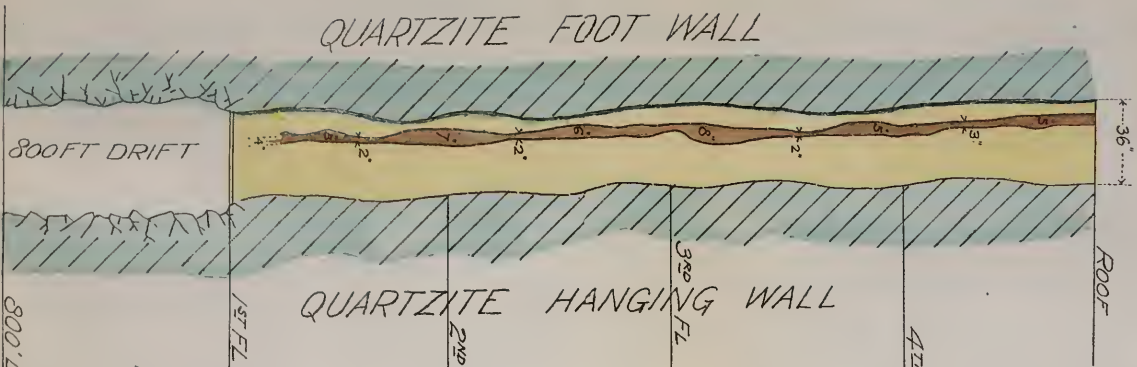
U. S. CIRCUIT COURT OF APPEALS,  
FOR THE NINTH CIRCUIT.  
PLAINTIFFS EXHIBIT, 45 West face of Clark Stope  
Received, JULY 28 1902.  
F. D. MONCKTON, Clerk,  
By MEREDITH SAWYER, Deputy, Clerk.

*Handwritten signatures and initials:*  
Meredith Sawyer  
F. D. Monckton



NORTH

SOUTH



800' LEVEL

1ST FL.

2ND FL.

3RD FL.

4TH FLOOR

ROOF

QUARTZITE HANGING WALL

QUARTZITE FOOT WALL

800 FT DRIFT

LEGEND

- COUNTRY ROCK .....
- VEIN FILLING - WASTE -
- QUARTZITE ORE .....

EAST FACE OF  
CLARK STOPE

SCALE 4FT TO THE INCH

NO 870.

U. S. CIRCUIT COURT OF APPEALS.

FOR THE NINTH CIRCUIT.

PLAINTIFFS EXHIBIT #6, East Face of Clark Stope

Received, JULY 28, 1902

F. D. MONCKTON, Clerk

By MEREDITH SAWYER, Deputy Clerk.

*Meredith Sawyer*  
 M. S. Sawyer  
 Deputy Clerk



137 WIDE WAS.

1436

636 BURKE

68 FULLER

722 O'NEIL

1641 LILA

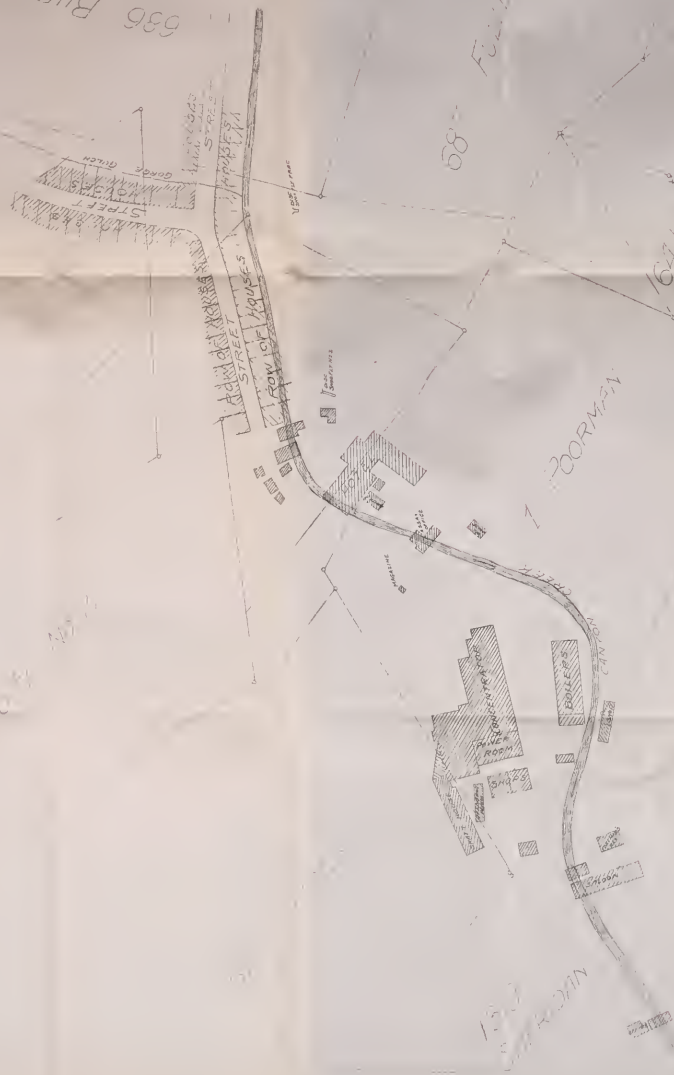
1200 CORMAN

1450 PROTECTION

WONDER

1502 SUNDAY

1502 CORMAN



2013/8/20

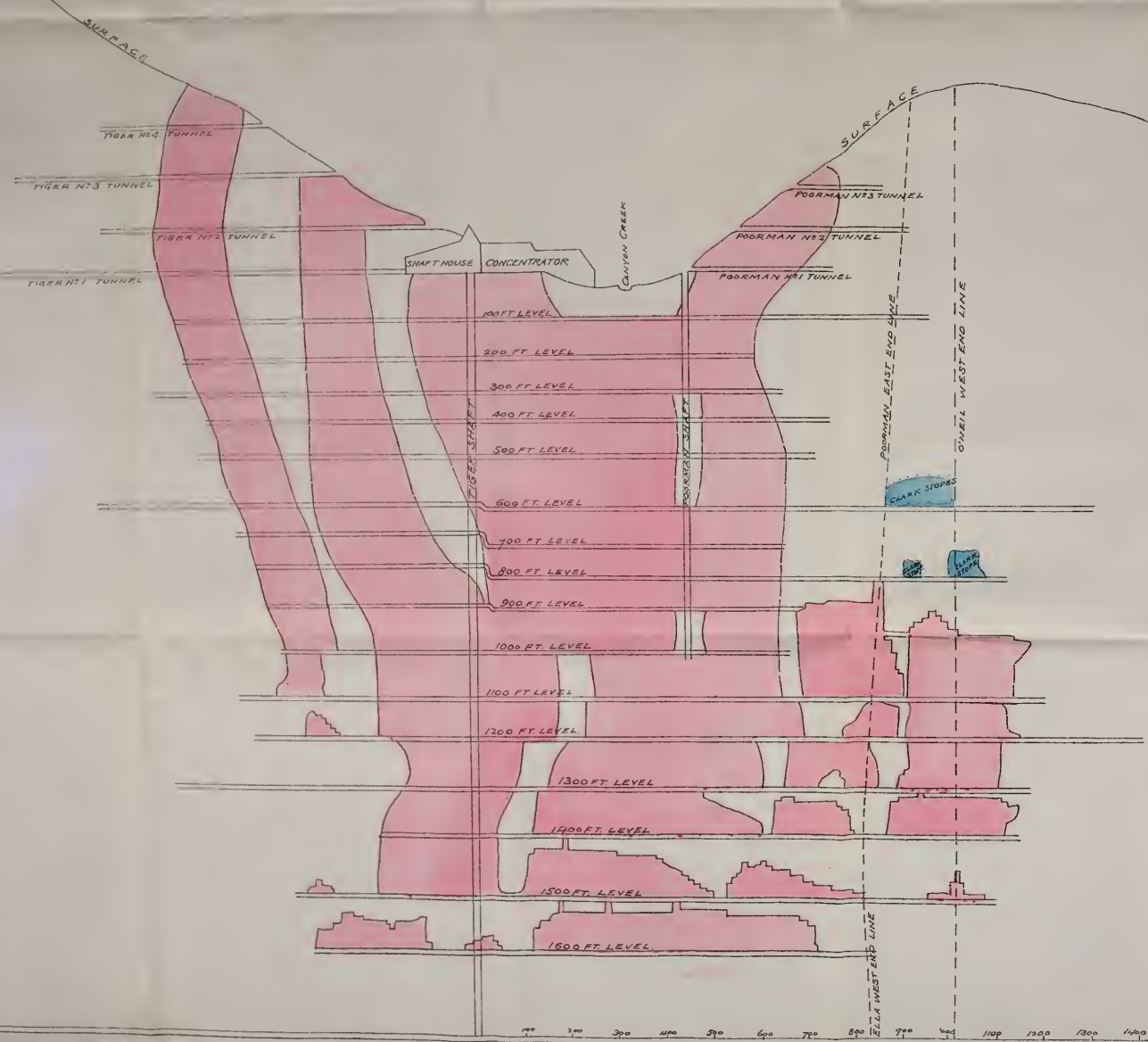
Scale 100 ft = 1 in

No 870  
 U S CIRCUIT COURT OF APPEALS -  
 FOR THE NINTH CIRCUIT  
 Plaintiff: Department of Social Security Administration  
 DEFENDANTS: EXHIBIT 3  
 DECEMBER 18, 1972  
 D. D. MONTGOMERY, Clerk  
 By MEREDITH SAWYER  
 Deputy Clerk



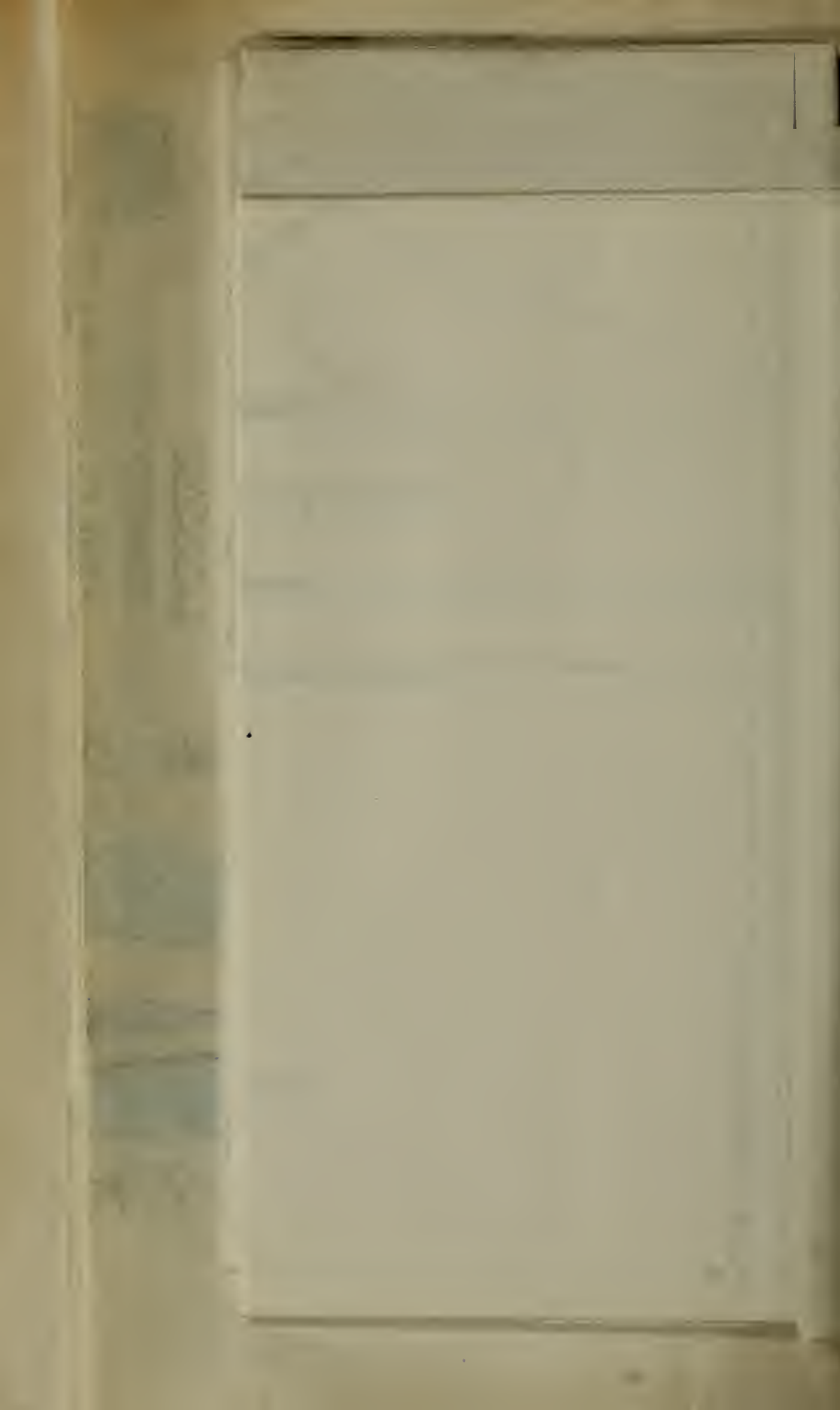


*Left of 6  
Left of 2*

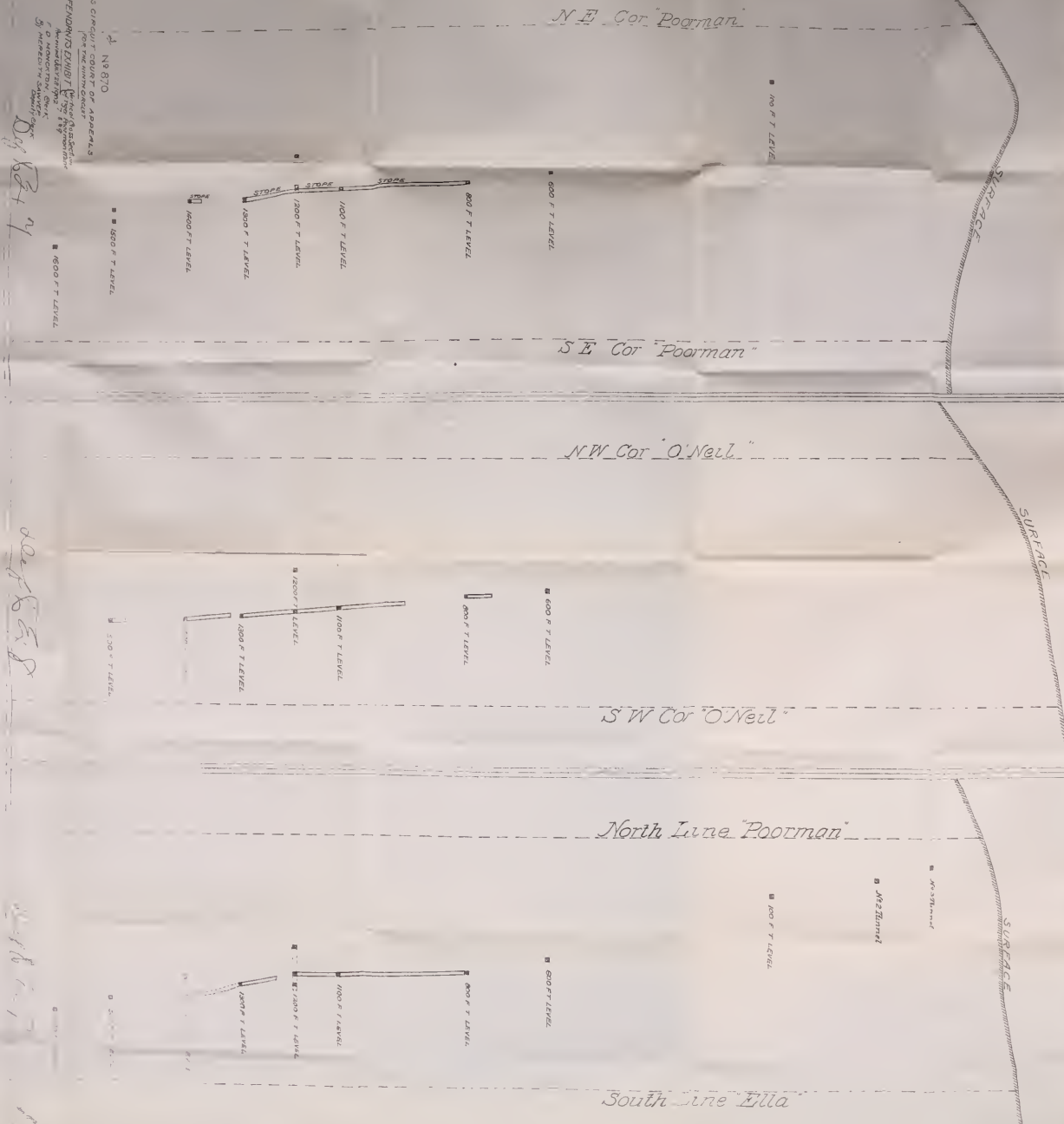


No 870  
 U.S. CIRCUIT COURT OF APPEALS -  
 FOR THE NINTH CIRCUIT  
 DEFENDANTS EXHIBIT 6  
 (Vertical Longitudinal  
 Section of the Tiger-Poorman  
 Mine. Scale 100 ft. to 1 in.)  
 Received JULY 28, 1902.  
 F. D. MONCKTON, Clerk.  
 By MEREDITH SAWYER,  
 Deputy Clerk.

EXHIBIT  
 VERTICAL LONGITUDINAL SECTION  
 OF THE  
 TIGER-POORMAN MINE  
 Scale 100 ft. = 1 in.  
 (Reduced to 200 ft. = 1 in.)  
 LOOKING NORTH-EAST



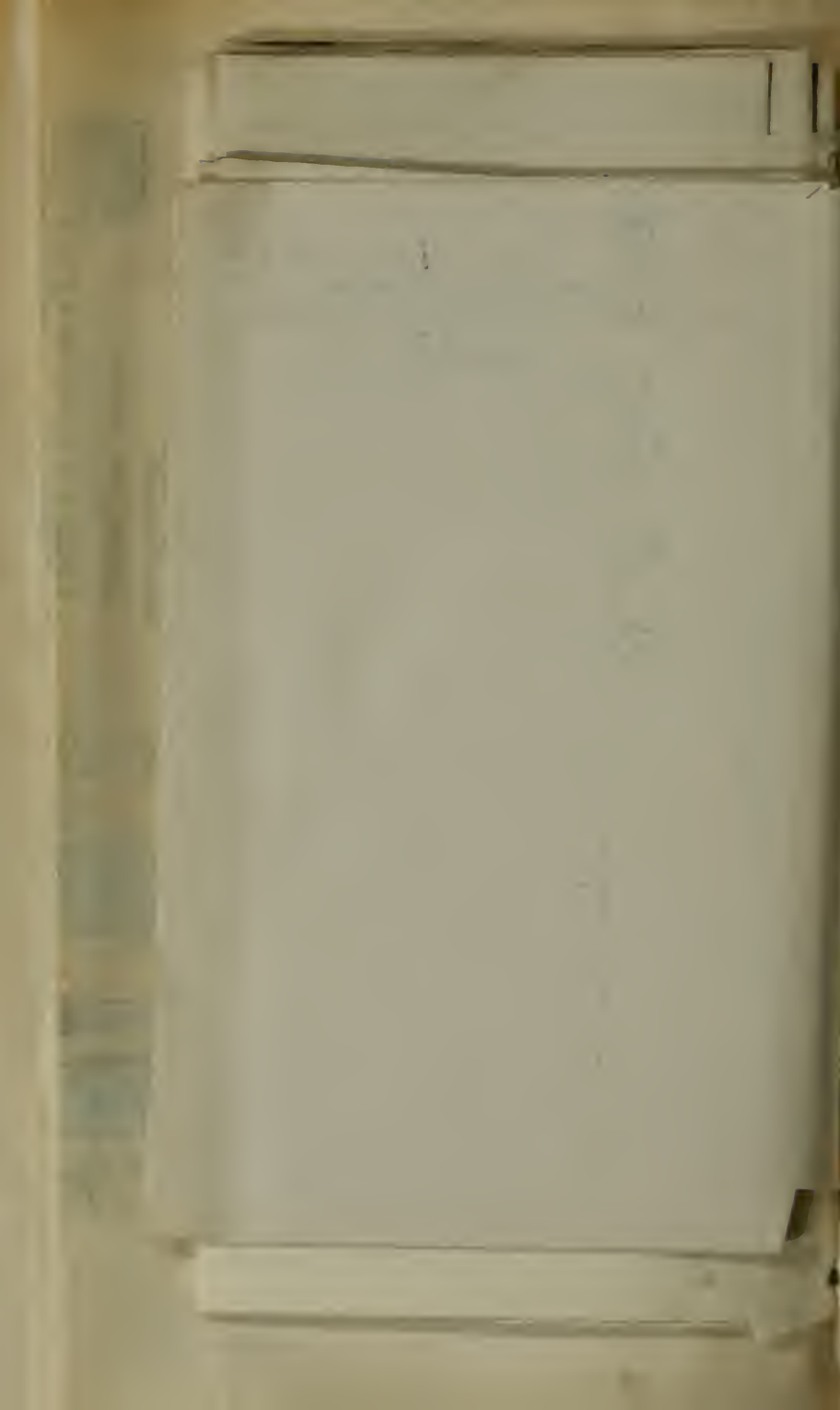
CHL CROSS SECTIONS OF TIGER POORMAN MINE  
 Looking Easterly - Scale 100ft = 1 in  
 Along Poorman East End Line  
 Along O'Neil West End Line  
 Along Line A-B



U.S. DEPARTMENT OF THE INTERIOR  
 GEOLOGICAL SURVEY  
 MINING DIVISION  
 TIGER POORMAN MINE  
 CHL CROSS SECTIONS  
 SCALE 100 FT. = 1 IN.  
 DRAWN BY  
 J. B. GARDNER  
 1910

100 ft = 1 in

100 ft = 1 in



— PLAN AND CROSS SECTIONS —

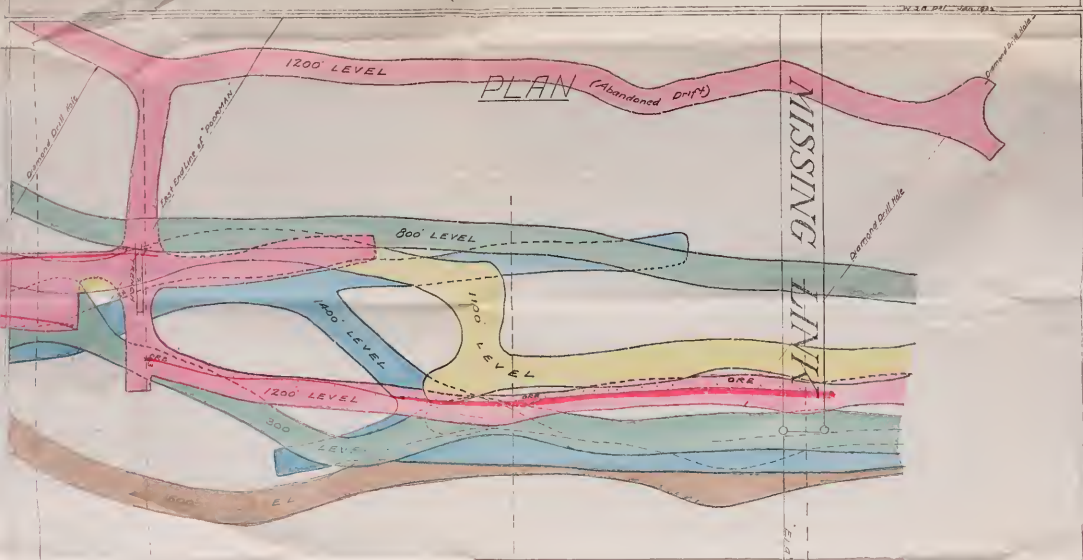
OF  
— THE LOWER LEVELS —

OF  
The Tiger-Poorman Mine

— THROUGH 'ELLA' GROUND —

SCALE 10 FEET TO 1 INCH  
(Reduced to 20 feet to 1 inch.)

Def. to 214  
C



ELLA



SECTION

NOTE  
For convenience  
of reference  
the sections  
are numbered  
as follows  
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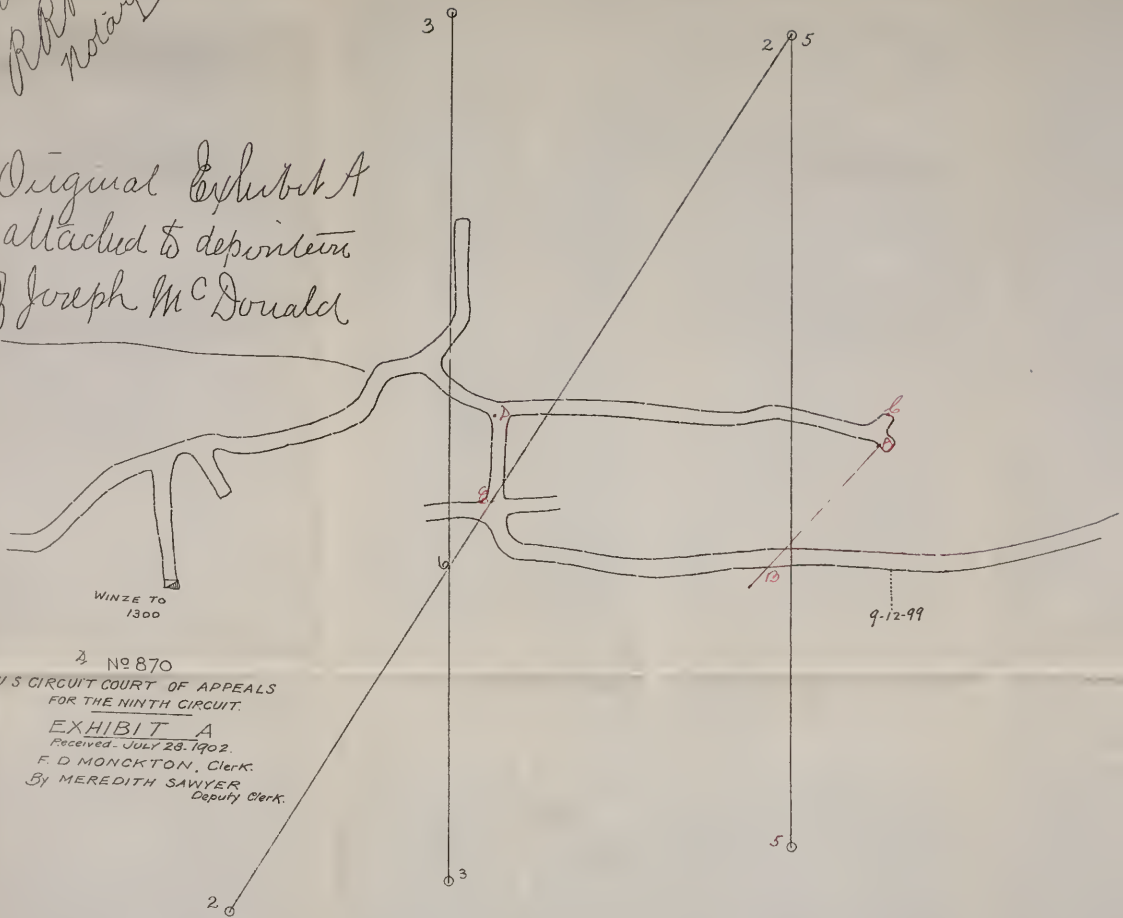






Exhibit A  
R.R. Rogers  
Notary Public

Original Exhibit A  
attached to depositions  
of Joseph M<sup>c</sup>Donald



WINZE TO  
1300

9-12-99

3 No 870  
U S CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT.  
EXHIBIT A  
Received July 28, 1902.  
F. D. MONCKTON, Clerk.  
By MEREDITH SAWYER  
Deputy Clerk.

Handwritten text at the top of the page, possibly a title or header, which is mostly illegible due to fading.

Handwritten text in the middle section of the page, appearing to be several lines of a letter or report.

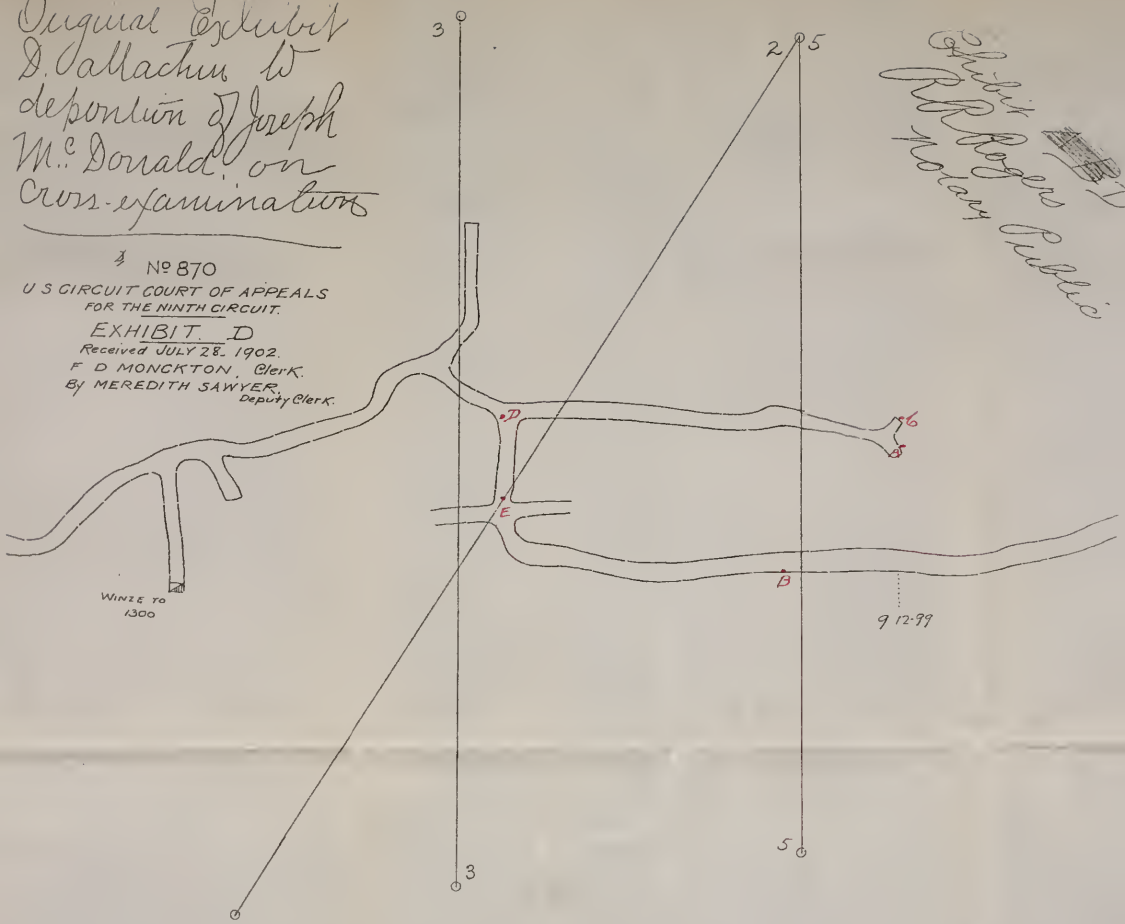




Original Exhibit  
D. Callahan vs  
deposition of Joseph  
M. Donald, on  
Cross-examination

No 870  
U S CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT.  
EXHIBIT D  
Received JULY 28, 1902.  
F D MONCKTON, Clerk.  
By MEREDITH SAWYER,  
Deputy Clerk.

Robert  
R. Rogers  
Notary Public

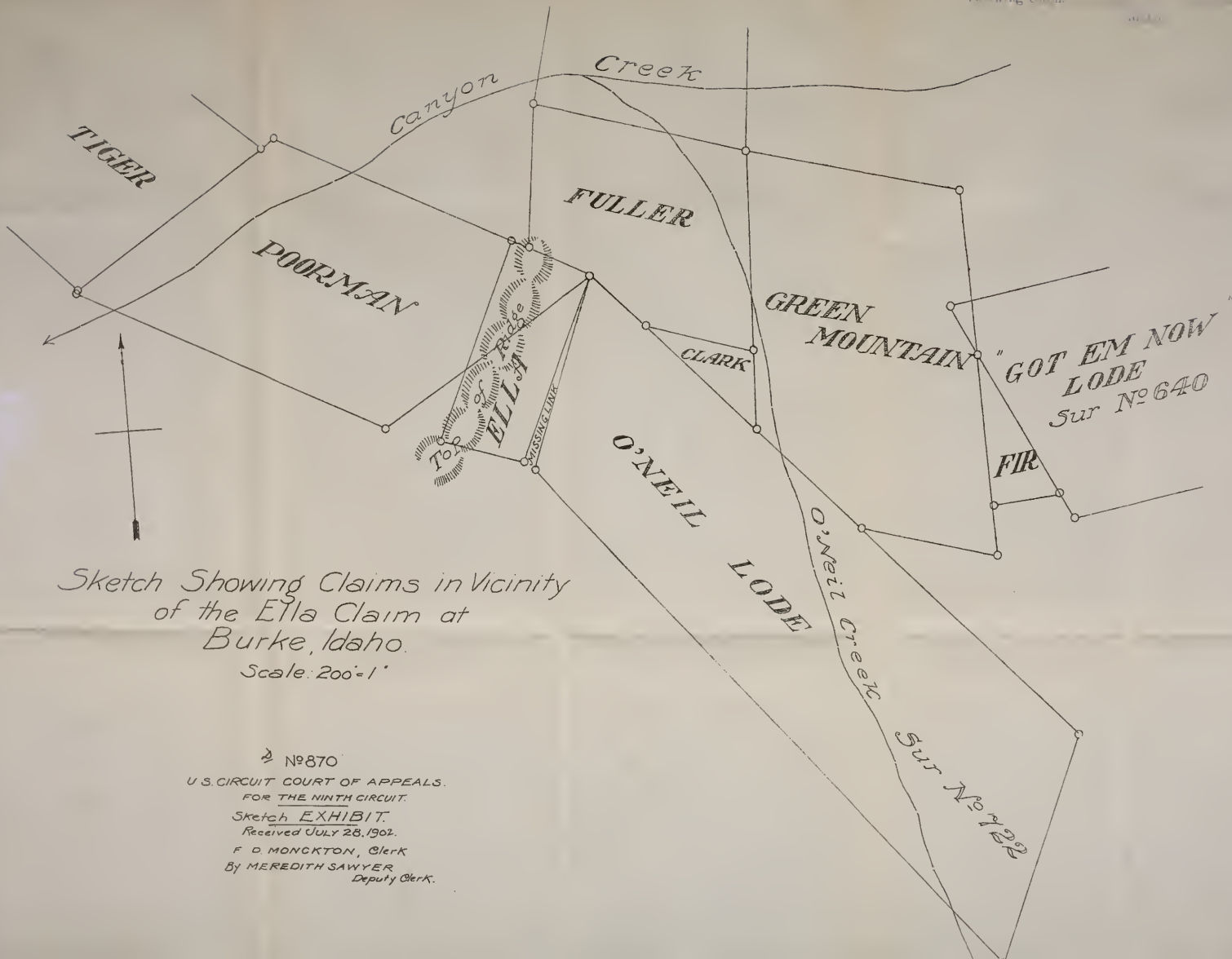


WINZE TO  
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*[Faint, illegible handwritten text, possibly bleed-through from the reverse side of the page.]*





Sketch Showing Claims in Vicinity  
of the Ella Claim at  
Burke, Idaho.  
Scale: 200' = 1"

2 No 870  
U.S. CIRCUIT COURT OF APPEALS.  
FOR THE NINTH CIRCUIT.  
Sketch EXHIBIT.  
Received JULY 28, 1902.  
F. D. MONCKTON, Clerk  
By MEREDITH SAWYER  
Deputy Clerk.



LINES

Blind School

POORMAN

1500  
PUMP

TIGER SHAFT

1200 F.T. LEVEL



EXHIBIT

— PLAN —

OF A PORTION OF 1200 F.T. LEVEL

THE TIGER-POORMAN MINE

Scale 40 ft = 1 in

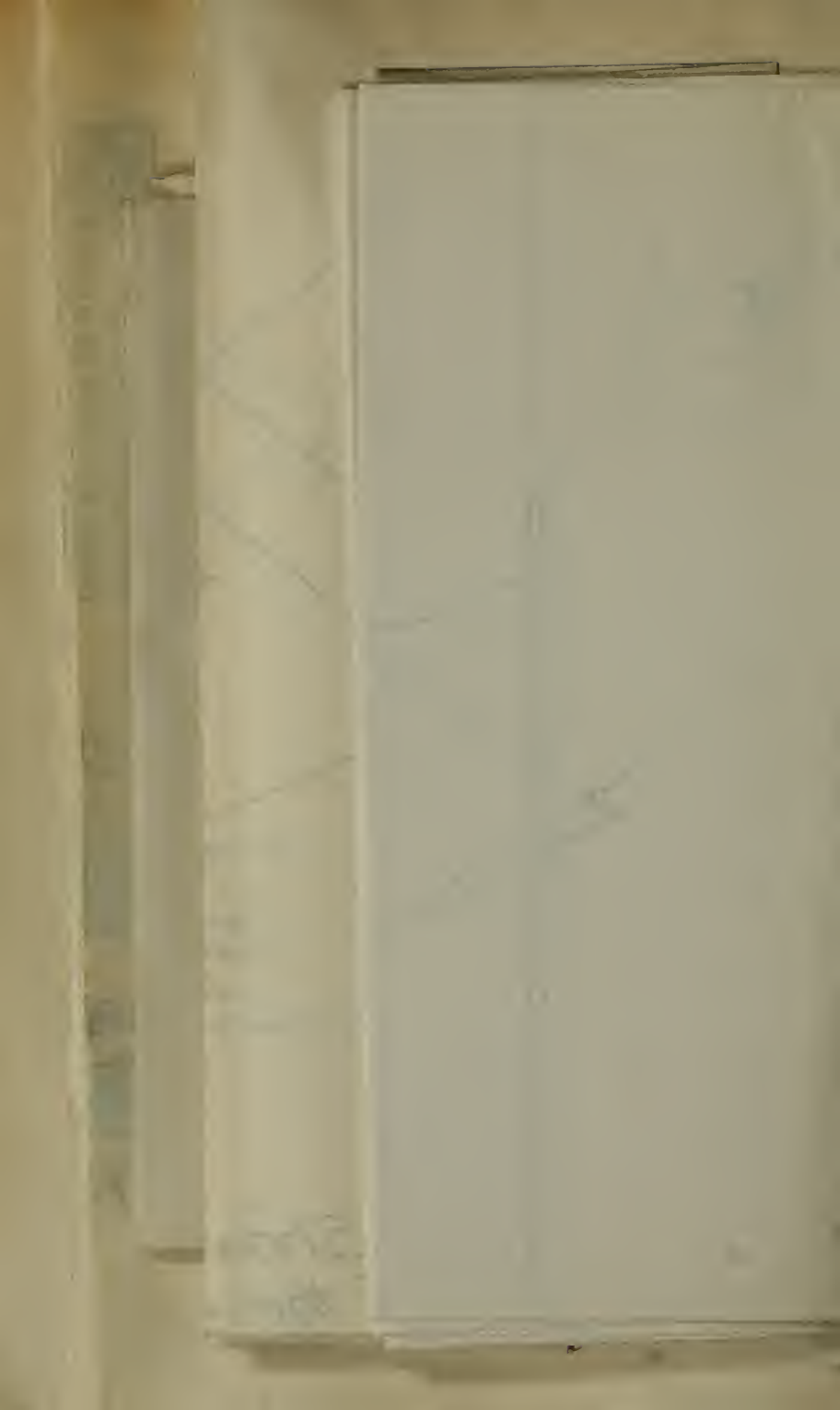
Nº 870

U.S. CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT

EXHIBIT Diagram of a portion of 1200 ft level  
Received JULY 28 1908

F. D. MUNDY, U.S. Clerk

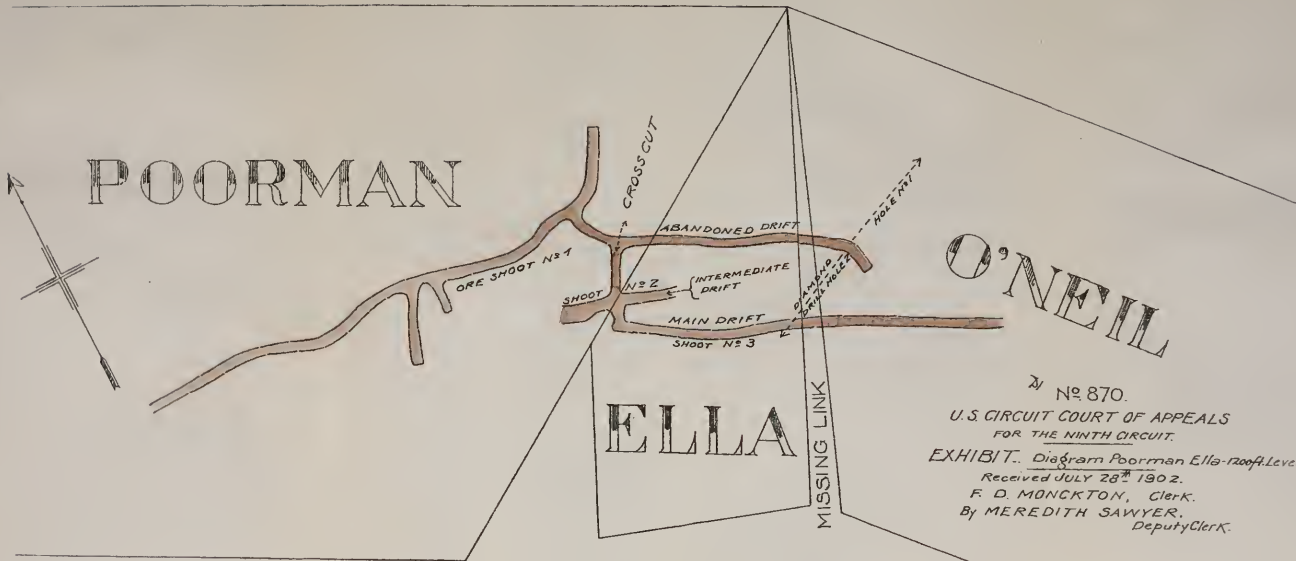
By MEREDITH SAWYER, Deputy Clerk





# 1200 FT. LEVEL

POORMAN 2716 1200 FT. LEVEL



SCALE 20 FT. = 1 INCH

(Reduced to 100 Ft. = 1 Inch)

No 870.  
U.S. CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT.  
EXHIBIT. Diagram Poorman Ella-1200ft. Level.  
Received JULY 28<sup>th</sup> 1902.  
F. D. MONCKTON, Clerk.  
By MEREDITH SAWYER,  
Deputy Clerk.

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*In the Circuit Court of the United States, for the District of  
Idaho, Northern Division.*

PATRICK CLARK, BENJAMIN C.  
KINGSBURY, JAMES P. HARVEY,  
and A. J. KERNS, Administrator of  
the Estate of James Clark, Deceased,  
Complainants,

vs.

BUFFALO HUMP MINING COM-  
PANY (a Corporation), and EMPIRE  
STATE-IDAHO MINING and DE-  
VELOPING COMPANY (a Corpora-  
tion),  
Defendants.

**Praeceptum Relative to Affidavit of Arthur A. Booth.**

To the Clerk of the Above Court.

We have heretofore orally requested you to make a part of the transcript in this case, the affidavit of Arthur A. Boothe, concerning which you have since advised us that Judge Beatty directed you not to do so, also stating that he had not used the affidavit of Boothe upon the hearing.

We now respectfully request you to make a copy of that affidavit, and attach it to the transcript with a special certificate from you stating the facts.

Respectfully,

STOLL & MacDONALD,

M. J. GORDAN,

W. W. WOODS,

Solicitors for the Complainants and Appellants.

[Endorsed]: No. 247. United States Circuit Court Northern Division, District of Idaho. Patrick Clark et al. vs. Buffalo Hump Mining Company et al. Praecipe. Filed July 16, 1902. A. L. Richardson, Clerk.

*In the Circuit Court of the United States, in and for the District of Idaho, Northern Division.*

PATRICK CLARK, BENJAMIN C.  
KINGSBURY, JAMES P. HARVEY,  
et al.,

Complainants,

vs.

BUFFALO HUMP MINING COM-  
PANY (a Corporation), and EMPIRE  
STATE-IDAHO MINING and DE-  
VELOPING COMPANY (a Corpora-  
tion),

Defendants.

No. 247.

Affidavit of Arthur A. Booth.

State of Washington, }  
County of Spokane. } ss.

Arthur A. Booth, being first duly sworn, on his oath deposes and says:

Affiant says that he is forty-two years of age, and is by profession a Mining Engineer and United States

Deputy Mineral Surveyor, and has been engaged in such profession for sixteen years last past.

Affiant says, that from the 1st day of September, 1899, up to the 7th day of July, 1900, he was in the employ of the Buffalo Hump Mining Company one of the defendants above named as underground Surveyor, for the purpose of making complete and accurate survey of the underground workings of the Tiger and Poorman mining claims, situated at Burke, Idaho at that time owned and operated by the said Buffalo Hump Mining Company the defendant herein. That during the course of his employment he made a complete survey and map of the 1200 foot level of said underground workings, which map was known as the "progress" map of said workings.

Affiant says that he is acquainted with one Thomas Jay who has made and served an affidavit in the above-entitled action, and that he has read the said affidavit and knows the contents thereof, and affiant says that the statements therein contained are misleading and incorrect, wherein the said Thomas Jay states that at the time of his going to work on the said properties he made an examination of the Progress map of the Buffalo Hump Mining Company, which contained a complete map of all its workings in its mines and discovered thereon three diamond drill holes beginning at the points marked "A" "B" and "C" on the sketch attached to the affidavit of said Jay, and marked exhibit "A" and made a part of said affidavit, and affiant further states that he has carefully examined the said map exhibit "A" and the location of the diamond drill holes as indicated thereon, and

affiant says that he knows of his own knowledge that the said map and said statements are misleading and incorrect, and that the said diamond drill holes are not at the points indicated on the said map, nor do they have the course indicated thereon.

Affiant further says that, referring to the sketch attached to the said affidavit of said Thomas Jay, that the diamond drill hole shown at the point marked "A" thereon, does not exist at said point, but that said diamond drill hole is located about 90 feet easterly of said point, marked "A" on said map exhibit "A" attached to said affidavit. That the diamond drill hole indicated at point "B" on said map exhibit "A" to said affidavit, does not exist at said point, but that said diamond drill hole is at least twenty feet westerly of said point as referred to.

Affiant further says that the course of the said diamond drill hole indicated as "B" upon the said sketch attached to the said affidavit of Thomas Jay is not correct, and that said diamond drill hole does not at any point in its course enter or penetrate the ground, or any ground, of the Ella lode claim, as shown on said map, as above referred to.

Affiant further states of his own knowledge that the crosscut referred to in the affidavit of the said Thomas Jay as having been run along the course of the said diamond drill hole, was not run along the course of said



diamond drill hole, and that the said diamond drill hole was not cut into by said crosscut at any point, and that the same is still intact and to be seen at the point marked "B" on the plat attached to this affidavit.

Affiant further says that the diamond drill hole indicated by the letter "C" upon the plat attached to the affidavit of said Thomas Jay is incorrect and misleading, in this, that the true course of said diamond drill hole is not shown upon said map, and affiant further states that, in his opinion, the said diamond drill hole so indicated on said map by the letter "C" does not at any point penetrate the ground of the Ella mining claim, as shown in the said map.

Affiant further states that he has attached hereto and made a part of this affidavit a plat marked Exhibit "A," upon which is shown correctly the underground workings of said mines on the said 1200 foot level, together with correct location and course of all the diamond drill holes bored in the vicinity of what is known as the abandoned drift on said level.

Affiant further states, that he knows of his own knowledge, gained as such underground engineer, in surveying the underground workings of said mines, and measuring the stopes therein for the purpose of making maps of said underground workings, that at no point in said underground workings did he see fifteen feet of first-class

ore, and affiant further states that at no point on the 1200 foot level of the said underground workings of said mine is there fifteen feet of first-class ore to be found or fifteen feet of any class of ore to be found there.

ARTHUR A. BOOTH.

Subscribed and sworn to before me this 11th day of September, A. D. 1901.

[Seal]

W. B. SAMS,  
Notary Public.

[Endorsed]: No. 247. In the Circuit Court of the United States for the District of Idaho, Northern Division. Patrick Clark et al, Plaintiffs, vs. Buffalo Hump M. Co. et al., Defendants. Affidavit of A. A. Booth on Application for Receiver and Injunction.

Filed September 13, 1901. A. L. Richardson, Clerk.

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*In the Circuit Court of the United States, for the District of  
District of Idaho, Northern Division.*

PATRICK CLARK, BENJAMIN C.  
KINGSBURY, JAMES P. HARVEY,  
and A. G. KERNS, Administrator of  
the Estate of James Clark, Deceased,  
Complainants,

vs.

BUFFALO HUMP MINING COM-  
PANY (a Corporation), and EMPIRE  
STATE-IDAHO MINING and DE-  
VELOPING COMPANY (a Corpora-  
tion),

Defendants.

**Clerk's Certificate.**

I, A. L. Richardson, Clerk of the Circuit Court of the United States for the District of Idaho, do hereby certify the foregoing transcript to be a full, true and correct copy of the praecipe and affidavit of Arthur A. Booth, filed in the above-entitled cause upon the application for receiver and injunction in said cause.

I further certify that the Honorable James H. Beatty, presiding Judge of said court, stated to me that neither the aforesaid affidavit of Arthur A. Booth, nor any of the proceedings upon the motion for an injunction herein, were considered upon the trial of said cause, and ought not to be made a part of the transcript on appeal in said

cause unless upon notice and the consent of opposing counsel. That I notified W. B. Heyburn, Esq., solicitor for the defendants, who refused to consent to said affidavit being included in the transcript in said cause.

Witness my hand and the seal of said Court, this 22d day of July, A. D. 1902.

[Seal]

A. L. RICHARDSON,  
Clerk.

*In the Circuit Court of the United States, in and for the  
District of Idaho, Northern Division.*

PATRICK CLARK, BENJAMIN C.  
KINGSBURY, JAMES P. HARVEY,  
and A. G. KERNS, as Administrator  
of the Estate of James Clark, De-  
ceased,

Complainants,

vs.

BUFFALO HUMP MINING COM-  
PANY (a Corporation), and EMPIRE  
STATE-IDAHO MINING and DE-  
VELOPING COMPANY (a Corpora-  
tion),

Defendants.

**Clerk's Certificate as to Filing of Affidavit.**

I, A. L. Richardson, Clerk of the Circuit Court of the United States for the District of Idaho, do hereby certify that the affidavit of A. A. Booth filed in the above-entitled cause on the 13th day of September, 1901, upon the motion for receiver an injunction was filed, at the in-



stance of counsel for defendants and upon behalf of the defendants in said cause.

Witness my hand and the seal of said Court this 26th day of July, A. D. 1902.

[Seal]

A. L. RICHARDSON,  
Clerk.

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[Endorsed]: No. 870. In the United States Circuit Court of Appeals for the Ninth Circuit. Patrick Clark, Benjamin C. Kingsbury, James P. Harvey, and A. G. Kerns, Administrator of the Estate of James Clark, Deceased, Appellants, vs. The Buffalo Hump Mining Company, a Corporation, and The Empire State-Idaho Mining and Developing Company, a Corporation, Appellees. Certified Copy of Affidavit of Arthur A. Booth, Praecipe that Same be Made a part of Transcript of Record and Certificate of Clerk of United States Circuit Court, Stating Reasons for not Obeying Praecipe. Upon Appeal from the United States Circuit Court, for the District of Idaho, Northern Division.

Filed July 31, 1902.

F. D. MONCKTON,  
Clerk.

